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THE

UNREPEALED GENERAL ACTS.

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE, NOTES AND AN INDEX.

From 1879 to 1886, both inclusive.

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VOL. III.

FOURTH EDITION.

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PREFACE.

THIS, the third volume of the fourth edition of the General Acts, has been compiled on the same lines as the two preceding volumes.

The Acts included in this volume are printed as modified up to the 1st March 1909.

S. C. BANERJEE,
Legal Assistant, Legislative Department,
Government of India.

CALCUTTA ;
The 15th January 1909.

LIST OF ABBREVIATIONS USED.

Aj. Code	For Ajmere Code.
Bal. Code	,, Baluchistan Code.
Ben. Code	,, Bengal Code.
Bom. Code	,, Bombay Code.
Bur. Code	,, Burma Code.
C. P. Code	,, Central Provinces Code.
E. B. and A. Code	,, Eastern Bengal and Assam Code.
Mad. Code	,, Madras Code.
P. and N.-W. Code	,, Punjab and North-West Code.
U. P. Code	,, United Provinces Code.
Coll. Stat.	,, Collection of Statutes relating to India.
Gen. R. and O.	,, General Statutory Rules and Orders.
Ben. R. and O.	,, Bengal List of Local Statutory Rules and Orders.
Bom. R. and O.	,, Bombay List of Local Rules and Orders.
C. P. R. and O.	,, Central Provinces List of Local Rules and Orders.
E. B. and A. R. and O.	,, Eastern Bengal and Assam List of Local Rules and Orders.
Mad. R. and O.	,, Madras List of Local Rules and Orders.
Punj. R. and O.	,, Punjab List of Local Rules and Orders.
U. P. R. and O.	,, United Provinces List of Local Rules and Orders.
Bur. R. M.	,, Burma Rules Manual.
Brit. Enact., N. S. (Mad. and My.)	,, British Enactments in force in Native States (Southern India, Madras and Mysore) Volume.
,, ,, ,, (Hyd.)	,, British Enactments in force in Native States (Southern India, Hyderabad) Volume.
,, ,, ,, (N. I.)	,, British Enactments in force in Native States (Northern India) Volume.
,, ,, ,, (W. I.)	,, British Enactments in force in Native States (Western India) Volume.
,, ,, ,, (C. I.)	,, British Enactments in force in Native States (Central India) Volume.
,, ,, ,, (Raj.)	,, British Enactments in force in Native States (Rajputana) Volume.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1879—1886.

The references to pages in the fifth column are to pages of this volume.

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	III	The Destruction of Records Act, 1879.	Rep. in part, Act XII of 1891; Act VI of 1900, s. 48. Amended (in Burma) Act XVIII of 1888, s. 7; (in Lower Burma), Act VI of 1900, s. 47; (in the United Provinces), Act XX of 1890, s. 38.	p. 1.
	V	The Presidency Banks Act, 1879.	.....	p 4.
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	IX	The Burma Coast-lights Act, 1879.	Rep. in part, Act X of 1889. Amended, Act XIII of 1898, s. 16.	p. 7.
	XI	The Local Authorities, Loan Act, 1879.	Amended, Act XV of 1885; Act I of 1905; Act V of 1907	p. 12.
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	XVI	The Madras Irrigation and Canal Company's Act, 1880.	.....	Mad. Code.
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	VI	The District Delegates Act, 1881.	.....	p. 114.
	VII	The Bengal Cess (Amendment No. 1) Act, 1881.	.....	Ben. Code.
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	XXI	The Broach and Kaira Incumbered Estates Act, 1881.	.....	Bom. Code.
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	XXIV	The Punjab Laws Amendment Act, 1881.	.....	P. and N.-W. Code.
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	XII	The Indian Salt Act, 1882.	Rep. in part, Act XX of 1884; Act XII of 1891. Rep. in part and amended, Act XIX of 1890.	p. 380.
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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	V	The Indian Merchant Shipping Act, 1883.	Rep. in part, Act X of 1889; Act VI of 1900. Rep. in part and amended, Act VI of 1891, ss. 9-13; Act XII of 1891.	p. 438.
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	VIII	The Little Cocos and Preparis Islands Laws Act, 1883.	.....	Bur. Code.
	X	Bikrama Singh's Estates Act, 1883.	.....	Not republished.
	XII	The British Burma[1] Pilots Act, 1883.	.....	Bur. Code.
	XIII	Indus Valley State Railway Lands.	.....	P. and N.-W. Code.
	XIX	The Land Improvement Loans Act, 1883.	Rep. in part, Act XII of 1891. Act XVI of 1908. Amended, Act XVIII of 1899. Act VIII of 1906.	p 453.

[1] Now read "Lower Burma"—*see* the Burma Laws Act, 1898 (XIII of 1898) s. 7.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1879-1886—*contd.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	XXII	The Rangoon Tramways Act, 1883.	.....	Bur. Code.
1884	II	The Madras Partition Deeds (Validation) Act, 1884.	.....	Mad. Code.
	IV	The Indian Explosives Act, 1884.	Rep. in part, Act X of 1889; Act XII of 1891.	p. 458.
	V	The Chota Nagpur Encumbered Estates (Amendment) Act, 1884.	.....	Ben. Code.
	VI	The Inland Steam-vessels Act, 1884.	Rep. in part, Act VI of 1900, s. 48. Rep. in part and amended, Act III of 1890, ss. 1-14; Act XII of 1891. Amended, Act XIII of 1891. Act VII of 1899. Act I of 1909.	p. 466.
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	IX	The Legal Practitioners Act, 1884.	Rep. in part, Act XII of 1891. Act II of 1899. Amended (virtually, s. 8), Act VI of 1900, s. 47.	p. 509.
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	XIX	The Rangoon Water-works Act, 1884.	.....	Bur. Code.

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1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	II	The Negotiable Instruments Act, 1885.	Rep. in part, Act XII of 1891.	p. 513.
	III	The Transfer of Property Act (1882) Amendment Act, 1885.	.....	p. 515.
	VII	The Pánch Mahals Laws Act, 1885.	.....	Bom. Code.
	VIII	The Bengal Tenancy Act, 1885.	.....	Ben. Code; E. B. and A. Code.
	IX	The Excise and Sea Customs Law Amendment Act, 1885.	Rep. in part, Act XII of 1891; Act XII of 1896; Act I of 1903.	p. 516.
	X	Estates, Oudh (amending) Act I of 1869.	.....	U. P. Code.
	XII	The Indian Sea Passengers Act, 1885.	Rep. in part, Act XII of 1891.	p. 517.
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	II	The Indian Income-tax Act, 1886.	Rep. in part, Act XII of 1891; Act VI of 1902. Amended, Act XI of 1903.	p. 539.

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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	VIII	The Bengal Tenancy Amendment Act, 1886.	.....	Ben. Code; E. B. and A. Code.
	IX	The Deo Estate Act, 1886.	.....	Not republished.
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	XI	The Indian Tramways Act, 1886.	Rep. in part, Act IX of 1890.	p. 583.
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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	XXI	The Oudh Wasikas Act, 1886.	.....	Not republished.
	XXII	The Oudh Rent Act, 1886.	.....	U. P. Code.
	XXIII	The Dekkhan Agriculturists' Relief Act, 1886.	.....	Bom. Code.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL.

ACT No. III OF 1879.[1]

[*8th March 1879.*]

An Act to authorize the Destruction of Useless Records.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows : Preamble.

1. This Act may be called the Destruction of Records Act, 1879. Short title.

It extends to the whole of British India;[2] and Local extent.

It shall come into force at once. Commencement.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 372; for discussions in Council, *see ibid*, 1878, Supplement, pp. 1601 and 1657; *ibid*, 1879, Supplement, pp. 175 and 293.

[2] This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely :—

the Districts of Hazáribagh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt. I, p. 44.

The Act has been declared in force in—

the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899);

Upper Burma generally, except the Shan States (ss. 2, 4, 5, 7 and 8), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

Power to High Court to make rules for disposal of records, etc.

2. The High Court may, from time to time, make rules[1] respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

[2] * * * * * * * * * * * *

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay [3][and the Chief Court of Lower Burma] may, from time to time, make rules[4] respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of—

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,[5] 11 & 12 Vict., c. 21.

(*b*) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-authority.

4. The Chief Controlling Revenue-authority may from time to time make rules[6] respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and Offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

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[1] For rules by the Madras High Court, *see* Mad. R. and O.; for rules made by the High Court of Bombay as to district and subordinate Courts, *see* Bom. R. and O.; Bombay Government Gazette, 1902, Pt. I, p. 1751; for rules by the Punjab Chief Court for subordinate Civil and Criminal Courts, *see* Punjab Gazette, 1904, Pt. III, pp. 723 and 1034, and for its own records, *see ibid*, 1907, Pt. I, p. 882; for rules made by the Judicial Commissioner of the Central Provinces for the classification, arrangement, custody, preservation and destruction of records of civil and criminal proceedings of Courts subordinate to him, *see* Central Provinces Gazette, 1904, Pt. III, pp. 327, 356, 405;
for rules for subordinate Courts in Ajmer-Merwara, *see* Aj. R. and O.;
for rules in the United Provinces of Agra and Oudh, *see* U. P. R. and O.;
for rules for Civil Courts in Coorg, *see* Coorg District Gazette, 1908, Pt. I, p. 125;
for rules for the destruction of civil records in Upper Burma, *see* Burma Gazette, 1901, Pt. IV, p. 325;
for rules for the destruction of criminal records, *see ibid*, p. 327;
for rules for the destruction of miscellaneous records, *see* Bur. R. M.;
for rules in Lower Burma, *see* Burma Gazette, 1905, Pt. IV, p 151.

[2] The second paragraph was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II.

[3] Inserted by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47 and Sch. I.

[4] For rules made by the Calcutta High Court, *see* Calcutta Gazette, 1900, Pt. I, p. 978; *ibid*, 1901, Pt. I, p. 1349.

[5] The Indian Insolvency Act, 1848, Coll. Stat., Vol. I.

[6] For rules *see* the Lists of Local Rules and Orders issued by the Local Governments.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books and papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-authority.

Bar of suits.

Interpretation-clause.

7. In this Act "Chief Controlling Revenue-authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces [1] [and the Chief Commissioner of Oudh]—the Board of Revenue: in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Punjab [2] [and Burma]—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification[3] in the official Gazette, appoint in this behalf by name or in virtue of his office.

Saving of documents kept under provision of law.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

9. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act 1891 (XII of 1891).*

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

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[1] Inserted by the North-Western Provinces and Oudh Act, 1890 (XX of 1890), s. 38, U. P. Code. The reference to the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh should not be read as referring to the Lieutenant-Governor of the United Provinces of Agra and Oudh; *see* the United Provinces Designation Act, 1902 (VII of 1902), s. 2, General Acts, Vol V.

[2] Inserted by the Burma Financial Commissioner's Act, 1888 (XVIII of 1888), s. 7 and Schedule, Bur. Code.

[3] For notification appointing the Board of Revenue for Eastern Bengal and Assam to be the Chief Controlling Revenue-authority for the Districts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur, Sylhet and certain parts of the Cachar District, *see* Eastern Bengal and Assam Gazette, 1905, Pt. I, p. 5.

ACT No. V OF 1879.[1]

[*22nd March 1879.*]

An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876,[2] in manner hereinafter appearing; It is hereby enacted as follows :—

Short title. Commencement.

XI of 1876.

1. This Act may be called the Presidency Banks Act, 1879; and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876,[2] the following proviso shall be added, that is to say :— XI of 1876.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no khazánchi," the words "without the previous sanction of the Board," shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say :—

"(*mm*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*) the following shall be substituted, that is to say :—

"(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)—

"discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 162; for discussions in Council, *see ibid*, 1879, Supplement, pp. 175, 307 and 349.

The Act as amending Act XI of 1876 is in force in Upper Burma generally (except the Shan States); *see* the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt. I, p. 44.

[2] General Acts, Vol. II.

"lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to" the words "lent to or for which bills may be discounted for" shall be substituted. Amendment of section 63.

ACT No. VI OF 1879.[1]

[*22nd March 1879.*]

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Elephants' Preservation Act, 1879: Short title.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma[2] and Coorg; Local extent.

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area [3] by notification in the local official Gazette.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 199; for the Preliminary Report of the Select Committee, *see ibid*, Pt. V, p. 387; for discussions in Council, *see ibid*, 1878, Supplement, pp. 1103, 1855; and *ibid*, 1879, Supplement, pp. 348, 350.

[2] For "British Burma" now read "Lower Burma," *see* s. 7 of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code. There is now no Chief Commissioner in Burma, that officer having since been created a Lieutenant-Governor by Proclamation dated 9th April, 1897, Gazette of India, 1897, Pt. I, p. 261.

[3] The Act has been extended to the following places, namely:—
Kila Sukindah, in Cuttack, *see* Calcutta Gazette, 1882, Pt. I, p. 278;
the District of Mymensingh, *see* Calcutta Gazette, 1883, Pt. I, p. 416;
the District of Midnapur, *see* Ben., R. and O.;
the Districts of Kámrup, Darrang, Naugong, Sibságar, Lakhimpur, Cachar, the Nágá Hills and the Khási and Jaintiá Hills, *see* Assam Gazette, 1880, p. 340;
the Gáro Hills (with the exception of certain portions of the estates of the zamindár of Bijni, *see* Assam Gazette, 1899, Pt. II, p. 431;
the Eastern Dvárs in the District of Goálpára, and that part of the District of Sylhet which has not been permanently settled, *see* Assam Gazette, 1883, Pt. I, p. 2; the Mokokchang Sub-division of the Nágá Hills District, *see* Notification No. 168-J., printed, Assam Gazette, 1891, Pt. II, p. 36; the Lushái Hills, *see* Gazette of India, 1898, Pt. II, p. 345, Notification No. 923-P., dated April 4, 1898;
the whole of Upper Burma, except the Katha and Bhamo Districts and the Shan States; Bur. R. M.; and to the Katha and Bhamo Districts of the Mandalay Division, *see* Burma Gazette, 1902, Pt. I, p. 520.

It has been extended under the Burma Laws Act, 1898 (XIII of 1898), s. 10, to the Shan States of Möng Mit with its dependency Möng Lang, *see* Burma Gazette, 1903, Pt. I, p. 889; and it has been declared under s. 3 (2) of the Kachin Hills Tribes Regulation, 1895 (Reg. I. of 1895), to be applicable to members of all hill tribes in the hill tracts within the limits of the said State; *ibid*.

It has been declared in force in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Reg. I of 1900), Ben. Code.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878,[1] and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended. VII of 1878.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

[2] **4.** Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government to declare what are main roads and canals, and to make rules as to licenses.

[3] **6.** The Local Government may from time to time, subject to the control of the Governor General in Council,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating—

(*a*) the grant and renewal of licenses under this Act;

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal;

(*c*) the time during which such licenses shall continue in force; and

(*d*) the conditions (if any) on which they shall be granted.

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[1] General Acts, Vol. II.

[2] S. 4 has been substituted by the Elephants' Preservation Act (1879) Amendment Act, 1883 (II of 1883), *infra*.

[3] For rules under this section in—

Burma . . *see* Bur. R. M.;

Assam . . . *see* Assam List of Local Rules and Orders, Ed. 1898, pp. 148-153;

North-Western Provinces and Oudh. *see* U. P. R. and O.; Notification No. $\frac{217 \text{ P.}}{456}$, dated May 5, 1886, North-Western Provinces and Oudh Gazette, Pt. I, p. 228;

Central Provinces, *see* C. P. R. and O.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

License to be produced and shown on requisition of certain officers.

8. Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (*a*) and (*b*), may require him to produce and show a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

ACT No. IX OF 1879[1].

[*23rd May 1879.*]

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Preamble.

WHEREAS it is expedient to increase the coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*),

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 42; and for proceedings in Council, *see ibid*, Supplement, pp. 17, 48, 488, 528.

and to render chargeable with coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called the Burma Coast-lights Acts, 1879".

Commencement.

It shall come into force on the first day of July, 1879;

Local extent.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal[1] and the Chief Commissioners of British Burma[2] and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed.

But any appointment made under the said Act shall be deemed to have been made under this Act.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

Customs-Collector.

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878[3], and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel."

"vessel" includes anything made for the conveyance by water of human beings or of property:

"Master."

"master," when used in relation to any vessel, means any person (except a pilot or harbour-master) having, for the time being, the charge or control of such vessel:

"Voyage."

"voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

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[1] A portion of these territories is now included within the Lieutenant-Governorship of Eastern Bengal and Assam; this however has not made any change in the territorial application of the Act—*see* Bengal and Assam Laws Act. 1905 (VII of 1905), s. 2, E. B. and A. Code.

[2] The reference to the territories administered by the Chief Commissioner of British Burma should now be read as referring to Lower Burma—*see* Burma Laws Act, 1898 (XIII of 1898), s. 7, Bur. Code.

[3] General Acts, Vol. II.

Coast-light Dues.

Coast-light dues payable in respect of vessels of fifty tons.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden :

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

Dues when payable.

5. The said coast-light dues shall become due and payable —

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance ;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port :

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

Power to vary rates of dues.

6. The Governor General in Council may from time to time, by notification in the Gazette of India reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels :

Proviso.

Provided that such rate shall not in any case exceed the rate fixed by section 4.

Collection of dues. Voucher to be given.

7. The Customs-Collector shall collect the coast-light dues,

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

Master to report arrival.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Tonnage of vessel chargeable with coast-light dues how ascertained.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :—

If registered.

(*a*) If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841[1] or Act No. XI of 1850[1], or under any other law for the time being in force for the registration of vessels in India, the Customs

[1] General Acts, Vol. I.

Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

If not registered.

(*b*) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841[1] or Act No. XI of 1850[1], or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

No port-clearance to be granted until dues, &c., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

[1] General Acts, Vol. I.

Coast-light Dues. Determination of Disputes under Act. Prosecutions under other Laws. Statement of Receipts and Expenditure.

Master to specify on demand voyage on which vessel is bound.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Penalty for evading payment of dues, &c.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

Magistrate to decide disputes.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure[1] not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Prosecutions under other Laws.

Saving of prosecutions under other laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Statement of Receipts and Expenditure.

Statement of receipts and expenditure to be published.

16. The Governor General in Council shall [2][publish annually] in the Gazette of India a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

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[1] See now Act V of 1898, General Acts, Vol. V.

[2] Substituted for the words "on or before the first day of October in each year publish" by the Burma Laws Act, 1898 (XIII of 1898), s. 16 and Sch. III, Bur. Code.

[*Preamble to s. 17.*]—*Repealed by the Indian Ports Act, 1889 (X of 1889).*

17. [*Amendment of Indian Ports Act, 1875.*] *Rep. by the Indian Ports Act, 1889 (X of 1889.)*

SCHEDULE.

(*See Section 4.*)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma[1]; or (*b*) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2 A voyage to or from any port in British Burma[1]—	from or to any other port in British Burma[1],

except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma[1] west of the longitude of Rangoon—	from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma[1] other than Tavoy and Mergui—	from or to any port in the Andaman and Nicobar Islands.

ACT No. XI OF 1879.[2]

[*21st July 1879.*]

The Local Authorities' Loan Act, 1879.

Preamble. WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:— XXIV of 1871.

Short title. 1. This Act may be called the Local Authorities' Loan Act, 1879.

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[1]Read now Lower Burma—see Burma Laws Act, 1898 (XII of 1898), s. 7, Bur. Code.

[2] The Statement of Objects and Reasons was not published, the Bill having been introduced and passed at one sitting; for proceedings with regard to the Bill, *see* Gazette of India, Supplement, 1879, p. 872.

Local extent. It extends to the whole of British India ;[1]

Commencement. and shall come into force upon the passing thereof.

XXIV of 1871.

Repeal of Act XXIV of 1871. **2.** The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act shall be deemed to have been made under this Act.

"Local authority." **3.** In this Act, "local authority"[2] means any body corporate, municipal committee[3] or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area ;[4] * *

"Funds." "funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority ;[5] [and "work" includes a survey whether incidental to any other work or not].

Loans for works may be granted on security of funds. **4.** Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Power to Governor General in Council to make rules. [6] **5.** The Governor General in Council may, from time to time, make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made ;

(2) the works for which loans may be made ;

(3) the manner of making applications for loans ;

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[1] The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894 ; Lohárdaga is now called the Ranchi District ; Calcutta Gazette, 1899, Pt. I, p. 44.

It has been declared to be in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

[2] *Cf.* s. 3 (28) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[3] It is not affected by the Ajmere Municipalities Regulation, 1886 (V of 1886), *see* s. 159.

[4] The word "and" was omitted by section 2 of the Local Authorities' Loan (Amendment) Act, 1907 (V of 1907), General Acts, Vol. VI.

[5] Inserted by *ibid.*

[6] For rules made under this section for the grant of loans by Government to local authorities, *see* Gazette of India, 1907, Pt. I, p. 975.

For rules made under this section and s. 7, for the raising of loans by local authorities in the open market, *see* Gazette of India, 1907, Pt. I, p. 977.

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them;

(13) the accounts to be kept in respect of loans,

and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the Gazette of India.

Remedy by attachment if loan not repaid.

[1]**6.** If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the berrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Attachment not to defeat prior charges legally made.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

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[1] Ss. 6 and 7 of this Act apply to money borrowed under the Local Authorities' (Emergency) Loans Act, 1897 (XII of 1897), *see* s. 4 of the Act, General Acts, Vol. IV.

[1]**7.** The Local Government, with the previous sanction of the Governor General in Council, may authorize[2] any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section 6.

Local Government may authorize parties to borrow from private persons under this Act.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section 5, so far as the same may be applicable to the case of such loans.

Power to make rules in regard to such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Loans not to be effected except under this Act.

Provided that nothing herein contained shall be deemed—

(*a*) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay [3][or Karachi], or the Commissioners for making Improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, [4][or the Commissioners for the Port of Rangoon], from exercising the borrowing powers conferred on them by any special enactment[5] now or hereafter in force ; or

(*b*) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works ; [6][or

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[1] Ss. 6 and 7 of this Act apply to money borrowed under the Local Authorities' (Emergency) Loans Act, 1897 (XII of 1897), *see* s. 4 of the Act, General Acts, Vol. IV.

[2] For rules under this section, *see* note to s. 5, *supra*.

[3] Inserted by section 3 of the Local Authorities' Loan (Amendment) Act, 1907 (V of 1907), General Acts, Vol. VI.

[4] Inserted by the Local Authorities' Loan (Amendment) Act, 1905 (I of 1905), General Acts, Vol. VI.

[5] As to—

(*1*) the Municipality of Calcutta, *see* Chap. X of the Calcutta Municipal Act, 1899 (Ben. Act III of 1899), Ben. Code ;

(*2*) City of Bombay, *see* City of Bombay Municipal Act, 1888 (III of 1888), ss. 106-110, Bom. Code ;

(*3*) City of Madras, *see* Madras City Municipal Act, 1904 (Mad. Act III of 1904), Chap. VIII ;

(*4*) Port of Bombay, *see* Bombay Port Trust Act, 1879 (Bom. Act VI of 1879), ss. 40-42, Bom. Code ;

(*5*) Port of Karachi, *see* the Karachi Port Trust Act, 1886 (Bom. Act VI of 1886), Bom.Code ;

(*6*) Calcutta Port Commissioners, *see* Calcutta Port Act, 1890 (Ben. Act III of 1890), ss. 18-27, Ben. Code ;

(*7*) Port of Madras, *see* Madras Port Trust Act, 1905 (Mad. Act II of 1905), Chap. VII ;

(*8*) Port of Rangoon, *see* the Rangoon Port Act, 1905 (Burma Act IV of 1 05), Chap. VI.

[6] Inserted by the Local Authorities' Loans Act (1879) Amendment Act, 1885 (XV of 1885), *infra*.

(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied].

Application of Act to loans existing previous to the fifth of September, 1871.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section 6 for the recovery of any money lent by him to any local authority before the fifth day of September 1871, and the interest due on such money; and the Governor General in Council or the Local Government may declare that any person who, before the said fifth day of September 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

THE LEGAL PRACTITIONERS ACT, 1879.

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ACT No. XVIII OF 1879.[1]

[*29th October 1879.*]

An Act to consolidate and amend the law relating to Legal Practitioners.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. Commencement. Local extent.

1. This Act may be called the Legal Practitioners' Act, 1879 : and shall come into force on the first day of January 1880.

This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may from time to time, by notification in the official

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 381; for the Reports of the Select Committee, *see ibid*, 1879, Pt. V, pp. 51 and 841; for Proceedings in Council, *see ibid*, 1878, Supplement, pp. 1658 and 1693; *ibid*, 1879, Supplement, pp. 79, 1066 and 1975.

For Civil Rules of Practice made by the High Court of Madras under this Act, the Code of Civil Procedure and certain other Acts, for observance by subordinate Civil Courts in that Presidency except the Madras Small Cause Court, *see* Fort St. George Gazette, 1905, Supplement, p. 1.

This Act has been declared in force in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code, and by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, in the Districts of Hazáribágh, Lohárdaga and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga (now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44) included at this time the District of Palamau, which was separated in 1894.

The whole Act, except section 36 as substituted by section 4 of Act XI of 1896, is repealed in the North-West Frontier Province by the N.-W. F. Province Law and Justice Regulation, 1901 (Reg. VII of 1901), s. 5, Sch. III, P. and N.-W. Code.

Gazette, extend[1] all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

Repeal of enactments.

2. On and from the first day of January 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, etc.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

References to repealed enactments.

All references made to any enactment hereby repealed in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850[2] or Act No. XI of 1865[3] :

"revenue-office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

"legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtár or revenue-agent :

[4] ["tout" means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving

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[1] Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882, *see* Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, *see* Bombay Government Gazette, 1885, Pt. I, p. 290. Sections 13 [except clauses (*a*), (*b*), (*c*), (*d*) and (*f*) thereof], 34, 36 and 40 have been extended to the whole of the Bombay Presidency, except the Province of Sindh (Bombay Gazette, 1904, Pt. I, p. 1635), and to the Province of Sindh (*Ibid*, 1905, Pt. I, p. 634).

Ch. I, s. 40, Sch. II, and so much of Chs. III, V, VI and VII as relates to pleaders, have been extended to Coorg, *see* Mysore Gazette, 1879, Pt. I, p. 355 ; *see* also Notification No. 64, dated 11th November 1899, Coorg District Gazette, 1899, Pt. I, p. 122, extending sections 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders.

S. 3 and Chs. II, III, V to VIII and the second schedule were extended to Lower Burma with effect from 16th April 1900 ; *see* Burma Gazette, 1900, Pt. I, p. 320, Bur. R. M. ; Burma Gazette, 1908, Pt. I, p. 18 (extending s. 20).

[2] *See* now the Presidency Small Cause Courts Act, 1882 (XV of 1882), *infra*.

[3] *See* now the Provincial Small Causes Courts Act, 1887 (IX of 1887), General Acts, Vol. IV.

[4] This definition was added by the Legal Practitioners Act, 1896 (XI of 1896), s. 1, General Acts, Vol. IV.

from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.]

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

Advocates and Vakils.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court, or [1][under section 41 of this Act], [2][or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act] shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office:

Provided that no such vakil [3][or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

Attorneys of High Court.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

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[1] These words and figures were substituted for the words "as an advocate on the roll of the Chief Court of the Punjab" by the Legal Practitioners Act, 1884 (IX of 1884), s. 2, *infra*.

[2] Inserted by s. 2 (*a*) of the Legal Practitioners (Amendment) Act, 1908 (I of 1908), General Acts, Vol. VI.

[3] Added by the Legal Practitioners (Amendment) Act, 1908 (I of 1908), s. 2 (*b*), General Acts, Vol. VI.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTÁRS.

Power to make rules as to qualifications, etc., of pleaders and mukhtárs.

6. The High Court may, from time to time, makes rules [1] consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(*b*) the qualifications, admission and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(*c*) the fees to be paid for the examination and admission of such persons ; and

(*d*) suspension and dismissal of such pleaders and mukhtárs.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Certificates to pleaders and mukhtárs.

7. On the admission, under section 6, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person ;

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[1] For rules made under this section by—
(1) Judicial Commissioner, Central Provinces, *see* Central Provinces Gazette, Pt. III, 30th June, 1904, *ibid* 25th August and 16th November 1905, *ibid* 12th April 1906 ;
(2) High Court, Madras, *see* Mad. R. and O.
(3) High Court, North-Western Provinces, *see* United Provinces Gazette, 1905, Pt. II, p. 189 ;
(4) High Court, Calcutta, *see* Calcutta Gazette, 1884, Pt. I, p. 322 ; 1892, Pt. I, p. 517 ; 1894, Pt. I, pp. 45, 1011 ; 1897, Pt. I, pp. 852, 1161 ; 1898, Pt. I, p. 965 ; 1901, Pt. I, p. 443 ;
(5) Chief Court, Lower Burma, in conjunction with ss. 7 and 8, *see* Burma Gazette, 1903, Pt. IV, p. 419, corrected by *ibid*, p. 592 ;
(6) Judicial Commissioner, Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 76 ;
(7) Chief Court of the Punjab, *see* Punj. R. and O.;
(8) Judicial Commissioner, Coorg, *see* Coorg R. and O.

authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules[1] consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

[2] [Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.]

Pleaders on enrolment may practise in Courts and revenue-offices.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules[3] consistent with this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly: and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

Mukhtárs on enrolment may practise in Courts.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from

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[1] For rules regarding renewal of certificates made by—
(1) Judicial Commissioner, Central Provinces, *see* C. P. R. and O., *see* also references in note under s. 6, *supra*.
(2) High Court, Madras, *see* the rules quoted in footnote under s. 6, *supra*, which were also made under s. 7.
(3) Chief Court, Punjab, *see* Pun. R. and O.

[2] Added by s. 3 of the Legal Practitioners (Amendment) Act, 1908 (I of 1908), General Acts, Vol. VI.

[3] For rules made by the High Court at Madras, *see* those quoted in the footnote on previous page, which were also made under s. 8. For rules by the Chief Court, Punjab, *see* Punj. R. and O.

time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure,[1]) appear, plead and act in any such Criminal Court and any Court subordinate thereto.

No person to practise as pleader or mukhtár unless qualified.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869[2] (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of mukhtárs.

11. Notwithstanding anything contained in the Code of Civil Procedure,[3] the High Court may, from time to time, make rules[4] declaring what shall be deemed to be the functions, powers and duties of mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtárs convicted of criminal offence.

12. The High Court may suspend or dismiss any Pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtárs guilty of unprofessional conduct.

[5]**13.** The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid—

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,[6]

[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.
[2] *See* now the Bengal Tenancy Act (VIII of 1885), Ben. Code.
[3] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.
[4] For rules in the Punjab, *see* Punj. R. and O.
[5] This section was substituted for the original section by the Legal Practitioners Act, 1896 (XI of 1896), s. 2, General Acts, Vol. IV.
[6] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

or some servant, relative or friend authorized by the party to give such instructions, or

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*c*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtár, or

(*d*) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtár through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*f*) for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtár.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, [1][any Judge of a Court of Small Causes of a Presidency-town,] any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any revenue-officer subordinate to him, may, pending the investigation

[1] These words were inserted by the Legal Practitioners Act, 1884 (IX of 1884), s. 4, *infra*.

and the orders of the High Court, suspend from practice any pleader or mukhtár charged before him or it under his section.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District,[1] be made through the Magistrate of the District[1] and the Sessions Judge;

(*c*) when made by the Magistrate of the District,[1] be made through the Sessions Judge;

(*d*) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

Power to call for record in case of acquittal under section 14.

15. The High Court, in any case in which a pleader or mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to make rules for mukhtárs on appellate side of High Court.

16. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure,[2] section 37, clause (*a*), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications and admission of proper persons to be mukhtárs practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the security which they may be required to give for their honesty and good conduct;

(*d*) the suspension and dismissal of such mukhtárs; and

(*e*) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

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[1] To be read as "District Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3 (*z*), General Acts, Vol. V.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, etc., of revenue-agents.

17. The Chief Controlling Revenue-authority may, from time to time, make rules[1] consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-authority; and subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

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[1] For rules made under this section as to Revenue-agents in—
(1) Assam, *see* the Assam Manual of Local Rules and Orders, Ed. 1893, pp. 153-158;
(2) Province of Agra, see U. P., R. and O.

No person to act as agent in revenue-offices unless qualified.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

[1]**22.** The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

(*a*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*b*) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or

(*c*) who, directly or indirectly, procures or attempts to procure the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*d*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*e*) for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the

[1] This section was substituted for the original section by the Legal Practitioners Act, 1896 (XI of 1896), s. 3, General Acts, Vol. IV.

charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority ; and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue-authority to call for record.

24. The Chief Controlling Revenue-authority, in any case in which a Revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V.

Of Certificates.

Fee for certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed [1][and of such description as the Local Government may, from time to time, prescribe [2]] :

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed :

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[1] These words were inserted by the Legal Practitioners Act, 1884 (IX of 1884), s. 5, *infra*.

[2] For instance of rule prescribing the stamp paper to be used for certificates, *see* Bur. R. M. ; C. P. R. and O.

Dismissed practitioners to surrender certificates.

[1] [Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.]

26. When any pleader, mukhtár or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTÁRS AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue-proceedings.

27. The High Court shall, from time to time, fix and regulate the fees[2] payable by any party in respect of the fees of his adversary's advocate, pleader, vakíl, mukhtár or attorney upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in subordinate Courts, [3][and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10].

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate[4] the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakíl, attorney, mukhtár or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

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[1] Added by the Legal Practitioners (Amendment) Act, 1908 (I of 1908), s. 4, General Acts, Vol. VI.

[2] For rules as to pleaders' fees made by—
(1) Judicial Commissioner, Central Provinces, *see* C. P. R. and O.;
(2) High Court, Madras, *see* the rules quoted in the footnote under s. 6, *supra*, which were also framed under this section;
(3) High Court, North-Western Provinces, *see* U. P. R. and O.;
(4) Judicial Commissioner, Oudh (pleaders in Civil Courts), *see* U. P. R. and O.;
(5) Chief Court, Lower Burma, *see* Burma Gazette, 1902, Pt. IV, p. 331;
(6) Chief Court, Punjab, *see* Punjab R. and O.

[3] These words were added by the Legal Practitioners Act, 1884 (IX of 1884), s. 6, *infra*.

[4] For rules as to fees in revenue-proceedings in—
(1) Central Provinces, *see* C. P. R. and O.;
(2) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 76 and 77.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

Exception as to agents mentioned in section 20.

28. No agreement entered into by any pleader, mukhtár or revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such pleader, mukhtár or revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Agreements with clients.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Power to modify or cancel agreements.

30. Such an agreement shall exclude any further claim of the pleader, mukhtár or revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

Agreements to exclude further claims.

31. A provision in any such agreement that the pleader, mukhtár or revenue-agent shall not be liable for negligence, or that he shall be relieved, from any responsibility to which he would otherwise be subject as such pleader, mukhtár or revenue-agent, shall be wholly void.

Reservation of responsibility for negligence.

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On persons illegally practising as pleaders, mukhtárs or revenue-agents.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár or revenue-agent, whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, etc., failing to deliver certificates.

33. Any pleader, mukhtár or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

34. Any pleader, mukhtár or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Power to frame and publish lists of touts.

[1] **36.** (*1*) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto,) may frame and publish lists of persons proved to their or his satisfaction, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(*2*) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(*3*) A copy of every such list shall be kept hung up in every Court to which the same relates.

(*4*) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(*5*) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*), and section 22, clause (*d*).

[1] This section was substituted for original s. 36 (relating to penalty for receiving or giving commission) by the Legal Practitioners Act, 1896 (XI of 1896), s. 4, General Acts, Vol. IV.

CHAPTER VIII.

MISCELLANEOUS.

Local Government to appoint examiners.

37. [1] To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations[2] for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

38. Except as provided by sections 4, 5, [3][7,] 16, [3][25,] 27, 32 and 36, nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practising in such Court or to advocates enrolled [4][under section 41 of this Act].

Suspension or dismissal of person holding mukhtar and revenue-agent's certificates.

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

Pleaders, etc., not be suspended or dismissed without being heard.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar or revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Power for certain High Courts to enrol advocates.

[5] **41.** (*1*) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules[6] as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(*2*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

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[1] For regulations made under this section by the Government of Burma, *see* Burma Gazette, 1905, Pt. I, p. 779, modified by *ibid*, 1906, Pt. I, p. 615.

[2] For regulations in Madras, *see* Mad. R. and O., and in Bengal, *see* Ben. R. and O.

[3] Added by s. 5. of the Legal Practitioners (Amendment) Act, 1908 (I of 1908), General Acts, Vol. VI.

[4] These words were substituted for the words "by the Chief Court of the Punjab" by the Legal Practitioners Act, 1884 (IX of 1884), s. 7, *infra*.

[5] This section was substituted for the original s. 41 (relating to advocates of the Punjab Chief Court) by the Legal Practitioners Act, 1884 (IX of 1884), s. 8, *infra*.

[6] For rules made for the Punjab, *see* Punj. R. and O.
" " for Oudh, *see* U. P. R. and O.
" " for Burma, Bur. R. M.
For rules made under this section and section 6 by the Chief Commissioner of the Central Provinces, *see* Central Provinces Gazette, 1904, Pt. III, p. 203.

(*3*) The High Court may dismiss any advocate so enrolled or suspend him from practice:

(*4*) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab [1][and the Chief Court of Lower Burma], unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

Repeal of Acts I of 1846 and XX of 1853.

[2]**42.** [3] [So much of Chapter VI of Bombay Regulation II of 1827 as has not been repealed,] Act I of 1846 *for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*, and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 .	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865 .	To amend the Pleaders, Mukhtárs and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866. .	To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 .	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877 .	The Punjab Courts Act, 1877 . .	Sections 42, 43, 44 and 45.

[1] Inserted by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47 and Sch. I.
[2] S. 42 was added by the Legal Practitioners Act, 1884 (IX of 1884), s. 9, *infra*.
[3] Inserted by the Repealing and Amending Act, 1903 (I of 1903), s. 3 and Sch. II, General Acts, Vol. V.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(*See section 25.*)

I.

For a certificate authorising the holder to practise as a pleader—

(*a*) in the High Court and any subordinate Court—rupees fifty :

(*b*) in any Court of Small Causes in a Presidency-town—rupees twenty-five :

(*c*) in all other subordinate Courts—rupees twenty-five :

(*d*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen ;

(*e*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorising the holder to practise as a mukhtar—

(*f*) in the High Court and any subordinate Court—rupees twenty-five :

(*g*) in any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h*) in all other subordinate Courts—rupees fifteen :

(*i*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten :

(*j*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorising the holder to practise as a revenue-agent—

(*k*) in the office of the Chief Controlling Revenue-authority and in any revenue-office subordinate to such Authority—rupees fifteen :

(*l*) in the office of a Commissioner and in any revenue-office subordinate to a Commissioner—rupees ten :

(*m*) in the office of a Collector and in any revenue-office subordinate to a Collector—rupees five.

ACT No. I OF 1880.[1]

[*9th January 1880.*]

An Act to confer certain powers on Religious Societies.

Preamble. WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain question relating to such bodies; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Religious Societies Act, 1880.

Commencement. It shall come into force at once; and

Local extent. shall extend to the whole of British India;[2]

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may from time to time, by notification in the Gazette of India, exclude from the operation of this Act.

Appointment of new trustee in cases not otherwise provided for. 2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 770; for Proceedings in Council, *see ibid*, 1879, Supplement, pp. 598, 745 and 174; *ibid*, 1880, Supplement, pp. 23 and 170.

[2] The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44) included at this time the present District of Palamau, which was separated in 1894.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877,[1] section 17.

III of 1877.

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Provision for dissolution of societies and adjustment of their affairs.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate: and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

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[1] See now the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

Saving of certain provisions of instruments.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be submitted to High Court.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.[1]

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(*See section 3.*)

Memorandum of the appointment of the new trustees of the (*describe the church, chapel, or other building and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of 18 , *A. B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same.*)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested,

First.—Old continuing trustees :—

(*here insert the same.*)

Second.—New trustees now chosen and appointed :—

(*here insert the same.*)

Dated this day of 18

Signed by the said *A. B.* as chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

A. B.,
Chairman of the said Meeting.

C. D.

E. F.

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[1] As to effect of a declaratory decree, *see.* s. 43 of the Specific Relief Act, 1877 (I of 1877), General Acts, Vol. II.

THE INDIAN MERCHANT SHIPPING ACT, 1880.

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84. Offences triable where offender found.
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THE SCHEDULE.

ACT No. VII OF 1880.[1]

[*11th March 1880.*]

An Act to amend the law relating to Merchant Shipping and for other purposes.

Preamble. WHEREAS it is expedient to prevent the departure of certain ships from British India;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to, and expenses incurred in respect of, such seamen and apprentices in cases to which section 211[2] of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force; 17 & 18 Vict., c. 104. 18 & 19 Vict., c. 91.

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called the Indian Merchant Shipping Act, 1880.

Commencement. And it shall come into force on the first day of June, 1880.

Interpretation clause. 2. In this Act, unless there is something repugnant in the subject or context,—

"ship." "ship" includes every description of vessel used in navigation, not propelled by oars:

"master." "master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship:

"port." "port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 881; for discussions in Council, *see ibid*, Supplement, pp. 1065, 1142, and *ibid*, 1880, Supplement, p. 717.

[2] Coll. Stat., Vol. I, Ed. 1881, p. 522. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 190 and 191, *ibid*, Vol. II, Ed. 1899.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving clause.

3. Nothing in this Chapter contained shall apply—

(*a*) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council;

(*b*) to any ship of less than one hundred and fifty tons register employed solely in fishing or [1][to any sailing ship of less than one hundred and fifty tons register employed] in plying coastwise between ports situate in India and Ceylon;

(*c*) to any pleasure-yacht.

[2] The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the local official Gazette, exclude from, or bring again within, the operation of this Chapter or any part thereof, subject to such modifications thereof (if any) as may be specified in the notification, any Native craft not square-rigged.[3]

[4][The Governor General in Council may, from time to time by notification in the Gazette of India, exclude from or bring again within the operation of sections 33 to 43, inclusive, any class of steam-ships of less than one hundred and fifty tons register which are employed in plying coastwise between ports situate in India and Ceylon, and do not carry cargo.]

Interpretation-clause. "British Indian ship:"

4. In this Chapter, "British Indian ship" means a ship registered under Act No. XIX of 1838,[5] Act No. X of 1841[6] or Act No. XI of 1850,[6] or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India; and

"British ship" includes a British Indian ship:

"British ship:" "manner prescribed:"

"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by rules published in the official Gazette, prescribe:

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[1] Inserted by the Indian Merchant Shipping (Amendment) Act, 1908 (XVIII of 1908), s. 2 (*1*), General Acts, Vol VI.

[2] This paragraph was added by the Deck and Load' Lines Act, 1891 (XVII of 1891), s. 2, General Acts, Vol. IV.

[3] For notifications issued under this section by the—
(*a*) Government of Bombay, *see* Bom. R. and O.;
(*b*) Chief Commissioner of Burma, *see* Burma Gazette, 1892, Pt. I, p. 548;
(*c*) Government of Madras, *see* Mad. R. and O.;
(*d*) Government of Bengal, *see* Ben. R. and O.

[4] Added by the Indian Merchant Shipping (Amendment) Act, 1908 (XVIII of 1908), s. 2 (*2*), General Acts, Vol. VI.

[5] Bom. Code.

[6] General Acts, Vol. I.

"unseaworthy;"

a ship is "unseaworthy" within the meaning of this Chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service:

"unsafe;"

a ship is "unsafe" within the meaning of this Chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended [1][and a ship shall be deemed to be unsafe when so loaded as to submerge in perfectly smooth salt water the centre of the disc indicating the loadline:]

"amidships."

[2] "amidships" means the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the stern-post.

Sending or taking Unseaworthy Ship to Sea.

Every person sending unseaworthy ship to sea liable to penalty.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Master taking unseaworthy ship to sea liable to penalty.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.[2]

Obligation of owner to crew with

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of

[1] Inserted by the Indian Merchant Shipping (Amendment) Act, 1908 (XVIII of 1908), s. 3, General Acts, Vol. VI.

[2] This definition was added by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 3, General Acts, Vol. IV.

apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same: respect to seaworthiness.

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable. Proviso.

Detention of Unsafe Ships by the Local Government.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend[1] this section is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed. Provisional detention by Local Government.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship. Service of grounds on master.

8. When the Local Government provisionally orders the detention of a ship it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained. Power to appoint surveyor. Action on receipt of his report.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order: Order of final detention.

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained. Service of report on master and appeal to Court of Survey.

[1] For ports to which the section has been extended in—
(*a*) the Presidency of Bombay, *see* Bom. R. and O., Bombay Gazette, 1896, Pt. I, pp. 30, 31;
(*b*) Burma, *see* Burma Gazette, 18°0, Pt. II, p. 215;
(*c*) the Presidency of Madras, *see* Mad. R. and O.;
(*d*) Bengal, *see* Ben. R. and O.

Option to owner or master of appointing assessor to accompany surveyor.

9. Where a ship has been provisionally detained and a person has been appointed under section 8 to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section 15, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical engineering or other special skill and experience; and

Procedure where surveyor and assessor agree; where they differ.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but, if the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

Power to refer to Court of Survey.

10. Notwithstanding anything contained in section 8, the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.

Detaining-officers.

[1]**11.** For the better execution of this Chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Their powers generally.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this Chapter, the following powers (that is to say):—

(*a*) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

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[1] For orders issued under this section in conjunction with other sections by—
(*a*) the Government of Bombay, *see* Bom. R. and O., Bombay Gazette, 1902, Pt. I, p. 1366;
(*b*) the Government of Madras, *see* Mad. R. and O.;
(*c*) Bengal, *see* Ben. R. and O.
For detaining-officers appointed under the section for the ports of Rangoon, Akyab, Maulmain and Bassein, *see* Burma Gazette, 1880, Pt. II, p. 215; for Bombay, *see* Bombay Government Gazette, 1904, Pt. I, p. 148.

(*b*) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make;

(*c*) he may require and enforce the production of all books, papers or documents which he considers important; and

(*d*) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Their power to order provisional detention and survey.

12. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections 7 and 8, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and, if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Detaining-officer to report to Local Government.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

Constitution of Court of Survey.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

The Judge.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.[1]

The assessors.

15. The assesssors shall be persons of nautical engineering or other special skill and experience.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette,[2] or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

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[1] For orders issued under this section in conjunction with other sections by—
(*a*) the Government of Bombay, *see* Bom. R. and O.;
(*b*) the Government of Madras, *see* Mad. R. and O.
For officers appointed in Burma under this section, *see* Bur. R. M.
For officers appointed in Bombay under this section, *see* Bom. R. and O., Bombay Gazette, 1904, Pt. I, p. 148.

[2] For list of assessors appointed for the Court of Survey at Aden, *see* Bom. R. and O.
For mode of nominating assessors in Madras, *see* Mad. R. and O.

Judge to summon assessors.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

Case to be heard in open Court.

17. Every such appeal and reference shall be heard in open Court.

Powers of Judge and assessors.

18. The Judge and each assessor shall, for the purposes of this Chapter, have the same powers as are by section 11 conferred on a detaining-officer.

Judge may appoint surveyor.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

Owner or master may attend at survey.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section 18 or section 19.

Power of Judge to detain or release ship.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Report to Local Government by Court.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of Local Government to make rules with respect to Court of Survey.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules[1] to carry into effect the provisions of this Chapter with respect to a Court of Survey, and in particular with respect to—

(*a*) the procedure before the Court;

(*b*) the requiring, on an appeal, of security for costs and damages;

(*c*) the amount and application of fees; and

(*d*) the ascertainment, in case of dispute, of the proper amount of costs under this Chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

Power to appoint referee to hear appeal.

24. If the Local Government is of opinion that an appeal under this Chapter involves a question of construction or design, or of scientific difficulty

[1] For Court of Survey Rules for—
(*1*) the Port of Bombay, *see* Bom. R. and O.;
(*2*) Lower Burma generally, *see* Burma Gazette, 1881, Pt. I, p. 362;
(*3*) Presidency of Madras, *see* Mad. R. and O.;
(*4*) Bengal, *see* Ben. R. and O.

or important principle, it may refer the matter to such one or more out of a list of scientific referees, [1] to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Option to appellant to require referee to be appointed.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Referee to have powers of Court of Survey.

26. The referee or referees to whom an appeal is referred under section 24 or section 25 shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

Liability of Government for costs and damages when ship wrongly detained.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Liability of shipowner for costs when ship rightly detained.

28. If a ship is finally detained under this Chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

What included in costs of detention and survey.

29. For the purposes of this Chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

Power to require from complainant security for costs, etc.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and

[1] For orders issued under this section in conjunction with other sections by—
(*a*) the Government of Bombay, *see* Bom. R. and O.;
(*b*) the Government of Madras, *see* Mad. R. and O.

compensation which such complainant may become liable to pay as hereinafter mentioned:

Proviso as to complaint by one-fourth of crew.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this Chapter.

Costs, etc., payable by Government recoverable from complainant.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this Chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain-cargoes.

Stowage of cargo of grain, etc.

32. No cargo of which more than one-third consists of any kind of grain corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

Penalty for improper stowage of such cargo.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load-lines.

Marking of deck-lines.

[1]**33.** (*1*) Every British Indian ship shall be permanently and conspicuously marked outside with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water.

(*2*) The upper edge of each of these lines shall be level with the upper side of the deck-plank next the waterway at the place of marking.

(*3*) The lines shall be white or yellow on a dark ground, or black on a light ground.

[1] Ss. 33 to 43 were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 4, General Acts, Vol. IV.

Marking of load-lines in case of vessels which are not coasting-vessels.

[1] **34.** (*1*) The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878,[2] shall, before his ship is entered outwards from any port in British India upon any voyage, or, if that is not practicable, as soon after as may be, mark outside upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

VIII of 1878.

(*2*) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this Chapter or of the Merchant Shipping Act, 1876,[3] as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship.

39 & 40 Vict., c. 80.

(*3*) When a ship has been marked as by this section required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

Statement in application to Customs-officer for entry outwards of such vessel as aforesaid.

[1] **35.** (*1*) Every person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distance in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's decks which is above such centre; and, if default be made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

(*2*) A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew, and no shipping-master shall proceed with the engagement of a crew for any such ship until this entry has been made.

(*3*) The master shall enter a copy of this statement in the official log-book (if any).

Marking of load-lines in case of coasting-vessels.

[1] **36.** (*1*) The master of every British ship which is a coasting-vessel within the meaning of the Sea Customs Act, 1878,[2] shall, before proceeding to sea from any port, mark outside upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

VIII of 1878.

[1] These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 4, General Acts, Vol. IV.

[2] General Acts, Vol. II.

[3] Coll. Stat., Vol. II, Ed. 1881, p. 1018. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 438, Coll. Stat., Vol. II.

(*2*) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this Chapter or of the Merchant Shipping Act, 1876,[1] as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship. 39 & 40 Vict., c. 80.

(*3*) When a ship has been marked as required by this section, she shall be kept so marked until notice has been given of an alteration.

Annual statement as to position of load-line on coasting-vessel.

[2]37. (*1*) The master of every such ship shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may, from time to time, appoint in this behalf,[3] a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

(*2*) The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as beforementioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(*3*) If default be made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be liable to a fine which may extend to one thousand rupees.

Modification of certain foregoing provisions.

[2]38. The foregoing provisions of this Chapter with respect to deck and load-lines are subject to the provisions of the two next following sections.

Position of disc and approval of, and certificate as to, position thereof.

[2]39. (*1*) The position of the discs mentioned in sections 34 and 36 respectively shall be fixed in accordance with the tables framed by the Load-line Committee appointed in the United Kingdom before the passing of the Merchant Shipping Act, 1890, subject to such allowance as may be necessary in consequence of any difference between the position of the deck-line marked under the provisions of this Chapter or of the Merchant Shipping Act, 1876,[1] and the position of the line from which free-board is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof as may from time to time, with the previous approval of the Governor General in Council, be sanctioned by the Local Government. 53 Vict., c. 9. 39 & 40 Vict., c. 80.

[1] Coll. Stat., Vol. II, Ed. 1881, p. 1018. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 438, Coll. Stat., Vol. II, Ed. 1899.

[2] These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), General Acts, Vol. IV.

[3] For officers appointed by the Government of Burma, *see* Bur. R. M.

(2) The Local Government shall from time to time appoint—

(a) a surveyor employed by Lloyd's or by any other society, corporation or association for the survey or registry of shipping approved by the Board of Trade under section 2 of the Merchant Shipping Act, 1890, and specially authorized in this behalf by Lloyd's or by such society, corporation or association, as the case may be, or

53 Vict., c. 9.

(b) an officer specially selected by the Local Government for the purpose,[1]

to approve and certify on its behalf from time to time the position of any such disc as aforesaid, and any alteration thereof,

and may, with the previous sanction of the Governor General in Council from time to time fix the fees[2] to be taken in respect of any such approval or certificate.

(3) The Local Government may suspend or remove from office any surveyor or officer so appointed.

Rules.

[3] **40.** (1) The Local Government, with the previous sanction of the Governor General in Council, may from time to time make rules—[4]

(a) determining the lines or marks to be used in connection with any such disc as aforesaid, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that the provisions of this Chapter are to have effect as if any such line were drawn through the centre of the disc;

(b) as to the mode in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship, whether by painting, cutting or otherwise;

(c) as to the mode of application for, and form of, certificates under this Chapter; and

(d) as to the entry of such certificates, and any other prescribed particulars concerning the draught of water and free-board of the ship,

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[1] For officers appointed (1) by the Government of Bombay, *see* Bombay Gazette, 1898, Pt. I, p. 795; (2) by the Government of Burma under this clause, *see* Burma Gazette, 1892, Pt. 1, p. 548.

[2] For scale of fees for certificates issued under this section in—
(a) the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1897, Pt. I, p. 1920;
(b) Burma, *see* Bur. R. M.;
(c) Madras, *see* Mad. R. and O.;
(d) Bengal, *see* Ben. R. and O.

[3] This section was substituted for the original section by the Deck and Load Lines Act, 1891 (XVII of 1891), General Acts, Vol. IV.

[4] For rules made under sub-sections (1) and (2) of this section for—
(a) Burma, *see* Bur. R. M.;
(b) Madras, *see* Mad. R. and O.;
(c) Bombay, *see* Bombay Gazette, 1899, Pt. I, p. 1311; *ibid*, 1900, Pt. I, p. 362;
(d) Bengal, *see* Calcutta Gazette, 1900, Pt. I, p. 199.

in the official log (if any) of the ship, or other publication thereof on board the ship, and as to delivering copies of such entries.

(*2*) Rules under clause (*a*) of sub-section (*1*) may, with respect to any class or classes of ships,—[1]

(*i*) declare what shall be deemed to be seasons of fair weather and seasons of foul weather, respectively, for any of the purposes of the rules, and

(*ii*) modify the tables referred to in sub-section (*1*) of section 39.

(*3*) All rules intended to be made under this section shall previously be published in draft in such manner as may be prescribed by the Local Government, and shall not be formally promulgated for ninety days at the least after such publication, and all such rules shall, while in force, have effect as if enacted by this Act.

Penalty for neglecting to mark, or submerging, load-line.

[2] **41.** Any master of a ship who neglects to cause his ship to be marked as by this Chapter required or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the lines or marks prescribed by or under this Chapter, except in the event of the particulars thereby denoted being lawfully altered, or for the purpose of escaping capture by an enemy,

shall be liable in respect of each such offence to a fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

[2] **42.** The master of any ship on which any of the marks or lines prescribed by or under this Chapter is inaccurately placed so as to be likely to mislead, who does not forthwith cause such inaccuracy to be corrected, shall be liable to a fine which may extend to one thousand rupees.

Saving of ships marked in the United Kingdom.

[2] **43.** The provisions of this Chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and having such lines fixed, marked and certified in accordance with the provisions of the law for the time being there in force, or to ships registered in a British possession and having such lines fixed, marked and certified in accordance with the provisions of an enactment passed by the Legislature of that possession, with respect to which enactment such a declaration as is mentioned in section 3 of the Merchant Shipping Act,

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[1] For rules made under sub-sections (*1*) and (*2*) of this section for—
(*a*) Burma, *see* Burma Gazette, 1896, Pt. I, pp. 506 and 619, and *ibid*, 1897, Pt. I, p. 563;
(*b*) Madras, *see* Mad. R. and O.

[2] These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), General Acts, Vol. IV.

1890, has been made by an Order of Her Majesty in Council and is for the time being in force.

Supplemental Provisions.

Release of ship at any time by Local Government.

44. The Local Government may at any time, if satisfied that a ship detained under this Chapter is not unsafe order her to be released either upon or without any conditions.

Who may enforce detention of ship.

45. When under this Chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any port-officer, harbour-master, conservator of a port or officer of Customs may detain the ship.

Penalty for proceeding to sea after detention.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for carrying to sea officer in execution of his duty.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this Chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may enquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.[1]

Detained ship not to be released because British registry closed.

48. When a ship has been detained under this Chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Powers of person authorized to survey ship.

49. For the purposes of the survey of a ship under this Chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Certain persons to be deemed public servants.

50. Every Judge, assessor, officer or surveyor under this Chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.[2]

XLV of 1860.

[1] *See* General Clauses Act, 1897 (X of 1897), s. 25, General Acts, Vol. IV.
[2] General Acts, Vol. I.

Service of order, where there is no master or resident owner, etc.

51. Where any order, notice, statement or document is required for the purpose of any provision of this Chapter, to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship, if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or, where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Order, etc., how to be served.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Delegation of powers to Port Commissioners, etc.

53. The Local Government may, from time to time, by notification in the official Gazette, delegate,[1] either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port, all or any of the powers, and require the said body to discharge all or any of the functions, of a Local Government under the foregoing sections of this Act, except the powers conferred by section 14 the power of preparing a list of assessors under section 15 and the power of making rules, and may cancel any such notification.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force, credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

Distressed Seamen.

Chapter to be taken as part of Act 1 of 1859.

54. This Chapter shall be read with, and taken as part of, Act No. I of 1859[2] (*for the amendment of the law relating to Merchant Seamen*).

Saving of provisions of Merchant

But nothing in this Chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or 17 & 18 Vict, c. 104.

[1] For delegation of powers of a Local Government to the Political Resident at Aden under this section, *see* Bom. R. and O.

[2] General Acts, Vol. I.

18 & 19 Vict., c. 91.

of section 16 of the Merchant Shipping Act Amendment Act, 1854,[1] apply. Shipping Acts, 1854 and 1855.

In this Chapter "local authority" means such person as the Local Government may from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed, on the local authority under this Chapter.[2] "Local authority."

Every person so appointed may be suspended or dismissed by the Local Government which appointed him. Power to suspend or dismiss.

55. The local authority may, subject to the rules hereinafter mentioned provide for the subsistence— Relief of distressed seamen at Indian ports.

(*a*) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and who are in distress in any such place; and

(*b*) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty, which is in want of men to make up its complement, and is bound— Distressed seamen to be sent home on board British ship wanting seamen to make up its crew.

(*a*) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(*b*) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

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[1] Coll. Stat., Vol. I. Ed. 1881, p. 522. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 191 and 192, respectively.

[2] For officials appointed under the power conferred by this section to perform the duties imposed on the "Local Authority" under Chapter III, in—

(*a*) Bombay, *see* Bom. R and O.;
(*b*) Burma, *see* Bur. R. M.;
(*c*) Madras, *see* Mad. R. and O.;
(*d*) Bengal, *see* Ben. P. and O.

(*c*) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

In default of such ship, on board of any ship.

57. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section 56 or section 57 the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.[1]

Master of British ship compelled to convey and give subsistence to such seamen.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section 56 or section 57, not exceeding one for every fifty tons burden, and shall, during the passage provide every such seaman or apprentice with a proper berth or sleeping-place, effectually protected against sea and weather.

Penalty for refusing so to do.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section 59, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Conditions under which master may claim payment.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this Chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints :[2]

Provided that no payment shall be made under this section except on the production of the following documents (that is to say) :—

(*a*) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of

[1] For rules made under this section in conjunction with s. 67, *see* Gen. R. and O.

[2] For order fixing certain rates of payment for subsistence and passage of distressed seamen and apprentices who are sent on board a British ship under s. 57 and are in excess of the number wanted to make up the complement of a crew, see Gen. R. and O., Gazette of India, 1907, Pt. I, p. 1142.

such seaman or apprentice, and the time when he was received on board; and

(*b*) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(*1*) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(*2*) the number of men and boys forming the complement of his crew;

(*3*) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(*4*) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint.[1] In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.[2]

17 & 18 Vict., c. 104.

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

62. (*a*) If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force and becomes distressed and is relieved under the provisions of this Chapter; or

(*b*) If any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign Power or to the subject of any foreign Power, becomes distressed and is relieved as aforesaid; or

(*c*) if any seaman or apprentice belonging to any British ship registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

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[1] For notification appointing officers under this section in Burma, see Bur. R. M.

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 192, Coll. Stat., Vol. II.

Mode of recovering such wages and expenses.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or, in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

Local Government may authorize persons to recover same.

64. The Local Government may from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.[1]

Such persons to be deemed persons filling a public office.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872,[2] section 57, clause 7. 1 of 1872.

Board of Trade may recover such amount from master or owner in certain cases.

65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section 62, clause (*c*), they may, instead of being recovered by a person authorized under section 64, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213,[3] and when so recovered shall be paid by the said Board to the Secretary of State for India in Council. 17 & 18 Vict., c. 104.

What shall be evidence of distress and expenses incurred.

66. In all proceedings under this Chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred under this Chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

Power of Governor General in Council to make rules.

67. The Governor General in Council may, from time to time, make rules[4] to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this Chapter, and generally to carry out the provisions of this Chapter.

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law.

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[1] For notification issued under this section for—
(*a*) Madras, *see* Mad. R. and O.
(*b*) Burma, *see* Bur. R. M.

[2] General Acts, Vol. II.

[3] Coll. Stat., Vol. I, Ed. 1881, p. 523. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 193, *ibid* Vol. II, Ed. 1899.

[4] For rules made under this section in conjunction with s. 58, *see* Gen R. and O.

CHAPTER IV.

SHIP SURVEYORS.

Local Government to appoint examiners,

68. The Local Government may, from time to time, appoint[1] competent persons for the [2][purpose] of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor General in Council, make rules—[3]

and to make rules as to qualification, etc., of ship surveyors.

(*a*) for the conduct of such examinations and the qualifications to be required,

(*b*) for the grant of certificates to qualified persons,

(*c*) for the fees to be paid for such examinations and certificates,

(*d*) for holding enquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(*e*) for the suspension and cancelment of such certificates.

Publication of rules.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

No person to practise as ship surveyor unless qualified.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 68, exercise such profession in such port unless he holds a certificate granted under that section:

Surveyors of Lloyd's and Veritas.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.[4]

Penalty for practising as ship surveyor without certificate.

70. Any person exercising the profession of a ship surveyor in contravention of the provisions of section 69 shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit

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[1] For appointments made in Bombay, *see* Bombay Gazette, 1904, Pt. I, p. 148.

[2] This word was substituted for the word "purposes" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[3] For rules made under this section for—

(*a*) the Presidency of Bombay, *see* Bom. R. and O. Bombay Gazette, 1902, Pt. I, p. 1872;

(*b*) Burma, *see* Burma Gazette, 1882 and 1883, Pt. I, pp. 294 and 462, respectively, *ibid*, 1902 and 1907, Pt. I, p. 7511 and p. 525, respectively;

(*c*) the Presidency of Madras, *see* Mad. R. and O. and Fort St. George Gazette, 1902, Pt. I, p. 1190;

(*d*) Bengal, *see* Ben. R. and O.

[4] The Port Officer, Aden, has been exempted from the operation of this section, *see* Bom. R. and O.

for any fee or reward for anything done by him in such exercise of such profession.

CHAPTER V.

RECEIVERS OF WRECK.[1]

"Wreck" defined.

71. In this Chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say :—

goods which have been cast into the sea and then sink and remain under water ;

goods which have been cast or fall into the sea and remain floating on the surface ;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again ;

goods which are thrown away or abandoned ; and

a vessel abandoned without hope or intention of recovery.

Savings.

[2]**72** [3]* Nothing in this Chapter shall be deemed to—

(*a*) affect the declaration of the twenty-third day of October 1889, in the schedule to this Act, between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of wrecks on their respective coasts, that declaration having been made applicable to India, or

(*b*) affect section 29 of the Indian Ports Act, 1889,[4] or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section. X of 1889.

Appointment of receivers.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such person as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned within such local limits as it may from time to time prescribe.[5]

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[1] *Cf.* the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 439, 450 and 452. *See* now ss. 510, 566, 518, 546, 520, 522 and 525 (2) of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

[2] This section was substituted for the original s. 72 by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 6, General Acts, Vol. IV.

[3] The word "But" was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[4] *See* now the Indian Ports Act, 1908 (XV of 1908), s. 29; General Acts, Vol. VI.

[5] For notifications appointing Receivers of Wreck in—

(*a*) the Presidency of Bombay, *see* Bom. R and O.; Bombay Gazette, 1896, 1897, 1899, Pt. I, pp. 817, 2008, 98, respectively, *ibid*, 1904, Pt. I, p. 148 ;

(*b*) Burma, *see* Bur. R. M.

(*c*) the Presidency of Madras, *see* Mad. R. and O.

(*d*) Bengal, *see* Ben. R. and O.

Persons so appointed shall be called receivers of wreck.

Rules to be observed by persons finding wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed [1][or bringing within such limits any wreck which has been found and taken possession of elsewhere,] shall as soon as practicable—

if he be the owner;

(*a*) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

if he be not the owner.

(*b*) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

Government or person finding wreck entitled to salvage.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section 74 by any person not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Disputes concerning amount of salvage.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

Notice to be given by receiver.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf,[2] containing a description of the same and the time at which and the place where the same was found.

Wreck may in certain cases be sold.

77. If after the publication of such notification the wreck is unclaimed or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

Proceeds how applied.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes his claim within one year from the date of the sale.

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[1] These words were inserted by the Indian Merchant Shipping Law Amendment Act 1891 (VI of 1891), s. 7, General Acts, Vol. IV.

[2] For rules by the Government of Madras, *see* Mad. R. and O.

Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section 74 shall be punished with fine which may extend to one thousand rupees, and, in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHTS AND FOG-SIGNALS.

Saving clause.

80. Nothing in this Chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council or belonging to any foreign Prince or State.

Appointment of inspectors of lights and fog-signals.

81. The Local Government may, from time to time, appoint persons to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862,[1] or any other similar law for the time being in force may apply, for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.[2] 25 & 26 Vict., c. 63.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section 11.

Notice of deficiency to be given to master or owner by such inspectors.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

Ship not to be cleared

83. Every notice so given shall be communicated in such manner as the Local Government may direct[3] to the Customs-collector at any port from

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[1] Coll. Stat., Vol. II, Ed. 1881, p. 733. *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60). *ibid*, Vol. II, Ed. 1899.

[2] For orders issued under this section in conjunction with other sections by—
(*a*) the Government of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1898, Pt. I, p. 1171;
(*b*) the Government of Madras, *see* Mad. R. and O.;
(*c*) Bengal, *see* Ben. R. and O.
For notification appointing inspecting officers in Burma under this section, *see* Bur. R. M.

[3] For direction by
the Government of Burma, *see* Bur. R. M.;
the Government of Madras, *see* Mad. R. and O.

which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port-clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals is pursuance of the said regulations or law.

by Customs-collector till inspector certifies it is properly provided with lights etc.,

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under Chapter II, Chapter III or Chapter V may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency-town in which it might be tried under the law relating to criminal procedure for the time being in force.

Offences triable where offender found.

[1]**85.** The provisions of this Act for the prevention of the overloading and improper loading of British ships shall apply to foreign ships also when in ports of British India, unless such foreign ships, if in ports of the United Kingdom, would be entitled to the benefit of an Order of Her Majesty in Council under section 4 of the Merchant Shipping Act, 1890.

53 Vict., c. 9.

Application of provisions respecting overloading to foreign ships.

[1] The present section 85 was added by the Deck and Local Lines Act, 1891 (XVII of 1891), s. 5, General Acts, Vol. IV; it will be superseded by the new section enacted by the Indian Merchant Shipping (Amendment) Act, 1903 (XVIII of 1903), s. 4, on the coming into force thereof: *see* General Acts, Vol. VI. The original section 85, which related to Assessors in salvage causes, etc., was repealed by the Code of Civil Procedure (Act XIV of 1882).

THE SCHEDULE.[1]

(*See section 72.*)

Declaration between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of Wrecks on their respective Coasts.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Government of the French Republic, desiring to regulate by a new Agreement questions relative to the disposal of the proceeds of wrecks on the coasts of the two States, have agreed to replace the Declaration signed at London on the 16th June 1879, by the following arrangements:—

ARTICLE I.

When any ship belonging to the subjects of one of the two Contracting States is wrecked or stranded on the coast of the other, the competent local authorities shall, with as little delay as possible, bring the fact to the knowledge of the Consul General, Consul, Vice-Consul or Consular Agent nearest to the spot where the wreck or stranding has taken place.

ARTICLE II.

All operations relative to the salvage of British ships which may be wrecked or stranded on the coasts of France shall be directed by the Consuls General, Consuls, Vice-Consuls or Consular Agents of Great Britain, and reciprocally the French Consuls General, Consuls, Vice-Consuls and Consular Agents shall direct all operations relative to the salvage of ships of their nation wrecked or stranded on the coasts of Great Britain.

ARTICLE III.

If the owners of the ship and cargo, or their duly authorized representatives shall be present and shall claim it, the Consuls General, Consuls, Vice-Consuls, and Consular Agents shall hand over to them the conduct of the salvage operations after requiring the deposit of the ship's papers, as well as the reimbursement of the expenses already defrayed, and sufficient guarantee for those incurred before the operations were handed over, and which may not have been already settled.

[1] The schedule was added by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 8, General Acts, Vol. IV.

ARTICLE IV.

The intervention of the local authorities shall only take place in the two countries for the purpose of assisting the Consular authority, of maintaining order, of securing the interests of the salvors if they are strangers to the ship-wrecked crews, and of assuring the due execution of the arrangements to be carried out for the entry and departure of the merchandise saved.

In the absence, and until the arrival, of the Consuls General, Consuls, Vice-Consuls or Consular Agents, the local authorities shall, moreover, take all necessary measures for the protection of the persons, and for the preservation of the articles, which shall have been saved from the wreck.

This intervention shall not give rise to any charges, with the exception of those which the salvage operations and the protection of the articles saved shall have rendered necessary, and those to which national ships would, under similar circumstances, be liable. These charges shall be paid according to the circumstances of the case, either by the Agents of the Consular service, or by their owners or their proxies.

In case absence, sickness or any other cause should prevent the agents of the Consular service from seeing to the operations and the management of the salvage, the local authorities who may be charged with the operations and management in question shall be bound to remit to the aforesaid agents the ship's papers and the net proceeds of the ship and the cargo.

ARTICLE V.

The merchandise and articles saved shall not be liable to any customs-duties, unless they are intended for home consumption, in which case they shall pay the same duties as they would have had to pay if they had been imported in national vessels.

ARTICLE VI.

The stipulations of the present Declaration[1] shall be applicable to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.	Victoria.
The Dominion of Canada.	Queensland.
Newfoundland.	Tasmania.
The Cape.	South Australia.
Natal.	Western Australia.
New South Wales.	New Zealand.

Provided always that the stipulations of the present Declaration shall be

[1] The declaration has been made applicable to India, *see* s. 72, *supra*.

made applicable to any of the above-named Colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative to the French Republic within one year from the date of the signature of the present Declaration.

The stipulations of the present Declaration shall be applicable to all the Colonies and foreign possessions of France.

ARTICLE VII.

The present Declaration shall come into operation three months after the date of its signature, and shall remain in force until the expiration of one year from the day on which either party may give notice of its intention to terminate it.

In witness whereof, the undersigned Plenipotentiaries, His Excellency the Earl of Lytton, Ambassador of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Excellency M. Eugene Spuller, Minister for Foreign Affairs, have signed the present Declaration, and have affixed thereto their seals.

Done at Paris, this twenty-third day of October 1889.

(L.S.) LYTTON.

(L.S.) E. SPULLER.

ACT No. XII OF 1880.[1]

[*9th July 1880.*]

An Act for the appointment of persons to the Office of Kází.

WHEREAS by the preamble to Act No. XI of 1864[2] (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kází-ul-Kuzáat and of Kází, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kází-ul-Kuzáat, or of City, Town or Pargana Kázís, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 21; for the Report of the Select Committee, *see ibid*, Pt. V, p. 203; for discussions in Council, *see ibid*, Supplement, pp. 345, 356 and 1203.

[2] Repealed by the Repealing Act, 1868 (VIII of 1868).

presence of Kázís appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kází; It is hereby enacted as follows:—

Short title. Commencement. Local extent.

1. This Act may be called the Kázís Act, 1880;

and it shall come into force at once.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Local Government may from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.[1]

Power to appoint Kázís for any local area.

2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázís should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kází for such local area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

Náib Kázís.

3. Any Kází appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kází is suspended or removed under section 2, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

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[1] The Act has been extended to certain districts, provinces and places in—
(*1*) the Bombay Presidency, *see* Bom. R. and O.;
(*2*) the Lower Provinces, *see* Ben. R. and O.; Calcutta Gazette, 1899, Pt. I, p. 1225;
(*3*) the Punjab, *see* Punj. R. and O.;
(*4*) Burma—the Akyab District, *see* Bur. R. M.;
(*5*) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 160;
(*6*) the United Provinces, *see* U. P. R. and O.;
(*7*) the Central Provinces—to Jubbulpore, *see* C. P. R. and O.

Nothing in Act to confer judicial or administrative powers; or

to render the presence of Kází necessary; or

to prevent any one acting as Kází.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(*a*) to confer any judicial or administrative powers on any Kází or Náib Kází appointed hereunder; or

(*b*) to render the presence of a Kází or Náib Kází necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(*c*) to prevent any person discharging any of the functions of a Kází.

THE PROBATE AND ADMINISTRATION ACT, 1881.

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ACT No. V OF 1881.[1]

[*21st January 1881.*]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,[2] does not apply; It is hereby enacted as follows:— 1865.

CHAPTER I.

PRELIMINARY.

Short title.

Local extent.

Commencement.

Personal application.

1. This Act may be called the Probate and Administration Act, 1881.

It applies to the whole of British India;[3]

and it shall come into force on the first day of April 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865,[3] dying before, on or after the said first day of April 1881: X of 1865.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindu Wills Act, 1870[4] applies, XXI of 1870.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 763; for the first Report of the Select Committee, *see ibid*, 1880, Pt. V, p. 35; for discussions in Council, *see ibid*, 1879, Supplement, pp. 593 and 743; 1880, pp. 515, 556; and *ibid*, 1881, pp. 10, 47 & 87.

For Civil Rules of Practice made by the Madras High Court under this Act, the Code of Civil Procedure and certain other Acts for observance by Subordinate Civil Courts in that Presidency, except the Madras Small Cause Court, *see* Fort St. George Gazette, 1905, Supplement, p. 1.

[2] This Act has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) s. 4 (1) and Sch. I, Bur. Code; and in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; and ss. 153 and 154 of the Act have been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following deregulationized Scheduled Districts in the Chutia Nagpur Division, namely:—the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga (now called the Ranchi District, *see* Cal. Gazette, 1899, Pt. I, p. 44), included at this time the Palamau District, which was separated in 1894.

[3] General Acts, Vol. I.

[4] General Acts, Vol. II.

no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma,[1]

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.[2]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Province."

"Province" includes any division of British India having a Court of the last resort:

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[1] *Read* now Lower Burma, *see* the Burma Laws Act, 1898 (XIII of 1898), s. 7, Bur. Code. The Chief Commissioner is now Lieutenant-Governor of Burma, *see* Proclamation, dated 11th April 1897, Gazette of India, 1897, Pt. I, p. 261.

[2] The following Courts have been authorised to receive applications for probate and letters of administration within the areas mentioned, namely:—

in Bengal: the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal (*see* now the Bengal and Assam Laws Act, 1905, VII of 1905, E. B. and A. Code); all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Calcutta Gazette, 1881, Pt. I, p. 445;

in the Andaman and Nicobar Islands: the Court of the Deputy Superintendent and the Court of the Chief Commissioner, *see* Gazette of India, 1881, Pt. I, p. 214;

in Assam: the High Court at Calcutta, throughout Assam; all District Judges, as defined in the Act, within the Province; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 180;

in the Punjab: the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may from time to time appoint as District Delegates, *see* Punjab Gazette, 1881, Pt. I, p. 483; these territories at the time included the North-West Frontier Province;

in Madras; the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as Delegates, *see* Madras List of Local Rules and Orders, Ed. 1898, p. 161;

in the Central Provinces: the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner; and every District Court within the Civil District for which it has been established, *see* Central Provinces Gazette, 1904, Pt. III, p. 277;

in Coorg: the Court of the Judicial Commissioner and the Court of the Commissioner, *see* Coorg District Gazette, 1889, Pt. I, p. 50;

in Bombay: the High Court at Bombay, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, p. 252;

in Ajmer-Merwara: the Court of the Chief Commissioner and the Court of the Commissioner, *see* Gazette of India, 1889, Pt. II, p. 534;

in the United Provinces: the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner [*see* now the United Provinces (Designation) Act, 1902, VII of 1902, General Acts, Vol. V]; all District Judges, as defined in the Act, within the United Provinces; and such Judicial Officers as the High Court or the Judicial Commissioner may from time to time appoint as District Delegates, *see* U. P. R. and O.;

in Upper Burma: the Court of the Judicial Commissioner and all District Courts, *see* Burma Gazette, 1897, Pt. I, p. 289.

"minor:" "minor" means any person subject to the Indian Majority Act, 1875,[1] who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person: IX of 1875.

"minority:"

"will:" "will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"Codicil:" "codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy:" "specific legacy" means a legacy of specified property:

"demonstrative legacy:" "demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate:" "probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor:" "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator:" "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; and

"District Judge." "District Judge" means the Judge of a Principal Civil Court of original jurisdiction.

CHAPTER II.[2]

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such:

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

[1] General Acts, Vol. II.

[2] As to grants of letters of administration and probates to the Administrator General, *see* the Administrator General's Act, 1874 (II of 1874), General Acts, Vol. II.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Proceedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

(*Chapter II.—Of Grant of Probate and Letters of Administration. Chapter III.—Of Limited Grants.*)

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

Of Limited Grants.

(*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(*b*).—*Grants for the Use and Benefit of others having Right.*

Administration with will annexed to

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of

attorney of absent executor.

administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate; and every such administrator

shall be subject to the immediate control of the Court and shall act under its direction.

(c) For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(*d*).—*Grants with Exception.*

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(*e*).—*Grants of the Rest.*

Probate or administration of rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(*f*).—*Grants of Effects unadministered.*

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

[1]*5th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

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[1] The 5th clause of the *Explanation* to s. 50 was added by the Probate and Administration Act, 1889 (VI of 1889), s. 11, General Acts, Vol. IV.

(*h*) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, etc.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called " District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code[1] in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, XLV of 1860.

and the costs of the proceeding shall be in the discretion of the Judge.

[1] General Acts, Vol. I.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.[1]

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is [2] [or are] granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Effect of unlimited probates, etc., granted by certain Courts.

[3] [Provided that probates and letters of administration granted—

(*a*) by a High Court, or

(*b*) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such

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[1] *See* now Act V of 1908, General Acts, Vol. VI.

[2] The words "or are" were inserted by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[3] This proviso was substituted for the original proviso by the Probate and Administration Act, 1903 (VIII of 1903), s. 3, General Acts, Vol. V.

Judge, and such Judge certifies that the value of the property affected beyond the limits of the Province does not exceed ten thousand rupees,

[shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.]

Transmission to High Courts of certificates of grants under proviso to section 59.

60. [1] [(*1*) Where probate or letters of administration has or have been granted by a Court with the effect referred to in the proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely :—

(*a*) when the grant has been made by a High Court, to each of the other High Courts,

(*b*) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(*2*) Every certificate referred to in sub-section (*1*) shall be to the following effect, namely :—

"I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate], of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India";

and such certificate shall be filed by the High Court receiving the same.

(*3*) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (*1*) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.]

Conclusiveness of application for probate or administration, if pro-

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed

[1] Substituted for the original section 60 by the Probate and Administration Act, 1903 (VIII of 1903), s. 3 (2), General Acts, Vol. V.

place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court. perly made and verified.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating Petition for probate.

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

[1]When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :— In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

[1] This paragraph was added to section 62 by s. 3 (3) of the Probate and Administration Act, 1903 (VIII of 1903), General Acts, Vol. V.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

[1]When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

Additional statements in petition for probate, etc.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the

[1] This paragraph was added to section 64 by s. 3 (3) of the Probate and Administration Act, 1903 (VIII of 1903), General Acts, Vol. V.

witnesses to the will (when procurable), in the manner or to the effect following:— by one witness to will.

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law[1] for the time being in force for the punishment of giving or fabricating false evidence. Punishment for false averment in petition or declaration.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct. Publication of citation.

[2][Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.]

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall senda copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a

[1] *See* the Indian Penal Code (Act XLV of 1860), Ch. XI, General Acts, Vol. I.

[2] This paragraph was added by the Probate and Administration Act, 1903 (VIII of 1903), s. [3] (4), General Acts, Vol. V.

copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect :—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at , without notice to *C. D.* of ."

After entry of caveat no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention or District Delegate thinks probate or let-

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

ters of administration should be refused in his Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Grant of probate to be under seal of Court.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, [1][he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint].

Form of such grant.

The day of , 18 ."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Grant of letters of administration to be under seal of Court.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with or without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, [2][he

Form of such grant.

[1] These words in s. 76 were substituted for the words "he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date" by the Probate and Administration Act, 1889 (VI of 1889), s. 12, General Acts, Vol. IV.

[2] These words in s 77 were substituted for the words "he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date" by the Probate and Administration Act, 1889 (VI of 1889), s. 13, General Acts, Vol. IV.

having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.]

The day of 18 ."

Administration-bond.

78. Every persom to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted shall give a bond to the Judge of the district Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him;

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid. [1]

[1] For rules made by the Chief Commissioner (now Lieutenant-Governor) of Burma, *see* Bur. R. M.; for rules made by the Government of Madras, *see* Fort St. George Gazette, 1905, Pt. I, p. 792; Mad. R. and O.; for rules made by the Government of Bengal, *see* Ben. R. and O.; for rules made by the Government of United Provinces, *see* U. P. R. and O.

(Chapter V.—Of the Practice in granting and revoking Probate and Letters of Administration.)

Grantee of probate or administration alone to sue, etc., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the [1][proceedings] shall take, as nearly as may be, the form of a suit according to the provisions of the Code of Civil Procedure,[2] in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

XXI of 1870.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870[3], applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure [2] applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

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[1] The word " proceedings " was substituted for the word " proceeding " by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] *See* now the Code of Civil Procedure, 1908, (Act V of 1908), General Acts, Vol. VI.

[3] General Acts, Vol. II.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code,[1] or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

[2]**90.** (*1*) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(*2*) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(*3*) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(*b*) lease any such property for a term exceeding five years.

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[1] General Acts, Vol. I.

[2] This section was substituted for the original s. 90 by the Probate and Administration Act, 1889 (VI of 1889), s. 14. For validation of acts under grants of administration made before the commencement of Act VI of 1889, *see* s. 19 of that Act, General Acts, Vol. IV.

(*4*) A disposal of property by an executor or administrator in contravention of sub-section (*2*) or sub-section (*3*), as the case may be, is voidable at the instance of any other person interested in the property.

(*5*) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (*1*), (*2*) and (*4*), or of sub-sections (*1*), (*3*) and (*4*,) as the case may be.

(*6*) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable, at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

93. Upon the death of one or more of several executors or administrators all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers an ordinary administrator.

Powers of married executrix or administratrix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral ceremonies.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

98[1]. (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(*2*) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(*3*) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.[2]

(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code. XLV of 1860.

Inventory to include property in any part of British India.

99. In all cases where [3] [a grant has been made] of probate or letters of administration intended to have effect throughout the whole of British India, the executor or [4][administrator] shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India;

and the value of such property situate in each Province shall be separately stated in such inventory;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

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[1] This section was substituted for the original s. 98 by the Probate and Administration Act, 1889 (VI of 1885), s. 15, General Acts, Vol. IV.

[2] General Acts, Vol. I.

[3] These words in s. 99 were substituted for the words "it is sought to obtain a grant" by the Probate and Administration Act, 1889 (VI of 1889), s. 16, General Acts, Vol. IV.

[4] The word "administrator," was substituted for the words "the person applying for administration" by the Probate and Administration Act, 1889 (VI of 1889), s. 16, General Acts, Vol. IV.

(Chapter VII.—Of the Duties of an Executor or Administrator.)

As to property of, and debts owing to, deceased.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Executor not to pay one legatee in preference to another.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential

When assets sufficient to pay debts and necessary expenses.

claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustrations.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.[1]

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C. is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

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[1] The provisions in Ch. VIII as to an executor apply also to an administrator with the will annexed, *see* s. 148, *infra*.

(Chapter VIII.—Of the Executor's Assent to a Legacy.)

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

(*Chapter VIII.—Of the Executor's Assent to a Legacy. Chapter IX.—Of the Payment and Apportionment of Annuities. Chapter X.—Of the Investment of Funds to provide for Legacies.*)

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.[1]

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due ; but the executor shall not be bound to pay it till the end of the year.

Date of successive payments when first payment directed to be made within given time, or on day certain.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made ;

Apportionment where annuitant dies between times of payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.[2]

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where legacy,

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize

[1] The provisions in Ch. IX as to an executor apply also to an administrator with the will annexed, *see s.* 148, *infra.*

[2] The provisions in Ch. X as to an executor apply also to an administrator with the will annexed, *see s.* 148, *infra.*

or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due. not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section. Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate. Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or, Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due. Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities. Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit ; Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested. Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ; Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(*1*) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(*2*) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(*3*) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.[1]

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

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[1] The provisions in Ch. XII as to an executor apply also to an administrator with the will annexed, *see* s. 148, *infra*.

Refund when legacy becomes due on performance of condition within further time allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund,[1] whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot

[1] For limitation of suits to compel a refund, *see* the Indian Limitation Act, 1908 (IX of 1908), Sch. I, No. 43, General Acts, Vol. VI.

oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall, in all cases, be without interest.

Refunding to be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

[1] **145A.** Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

[1] S. 145A was inserted by the Probate and Administration Act, 1890 (II of 1890), s. 16, General Acts, Vol. IV.

(*Chapter XIII.—Of the Liability of an Executor or Administrator for Devastation. Chapter XIV.—Miscellaneous.*)

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation;

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

for neglect to get in any part of property.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

149. Nothing herein contained shall—

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865,[1] shall be instituted in any Court in British India except under this Act.

X of 1865.

151. [*Repeal of portions of Act XXVII of 1860.*] *Rep. by the Succession Certificate Act, 1889 (VII of 1889).*

Grant of probate or administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under**[2] Act No. XXVII of 1860,[3] or Bombay Regulation No. VIII of 1827 ;[4] and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Amendment of Court-fees Act, 1870 (VII of 1870).*] *Rep. by the Succession Certificate Act, 1889 (VII of 1889).*

Amendment of Hindu Wills Act, 1870.

154. The following amendments shall be made in the Hindu Wills Act, 1870 [5] (namely) :—

XXI of 1870.

(*a*) for the portion of section 2 commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted :

(*b*) the third clause of section 3 and the last clause of section 6 shall be repealed ;

(*c*) in section 6, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

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[1] General Acts, Vol. I.

[2] The words "the said" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] Act XXVII of 1860 has been repealed by the Succession Certificate Act, 1889 (VII of 1889) but *see* saving in s. 2 of the latter Act, General Acts, Vol. IV.

[4] Bom. Code.

[5] General Acts, Vol. II.

Validation of grants of probate and administration made in British Burma.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865,[1] which, before this Act comes into force, have been made in British Burma[2] shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law. X of 1865.

156. [*Amendment of Indian Limitation Act, 1877 (XV of 1877).*] *Rep. by the Indian Limitation Act, 1908 (IX of 1908).*

Surrender of revoked probate or letters of administration.

[3] **157.** (*1*) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(*2*) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

ACT No. VI OF 1881.[4]

[*21st January 1881.*]

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

Preamble.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Short title.

1. This Act may be called the District Delegates Act, 1881.

Extent.

It extends to the whole of British India[5];

Commencement.

and it shall come into force on the first day of April, 1881.

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[1] General Acts, Vol. I.

[2] Read now "Lower Burma," *see* the Burma Laws Act, 1898 (XIII of 1898), s. 7, Bur. Code.

[3] S. 157 was added by the Probate and Administration Act, 1889 (VI of 1889), s. 17, General Acts, Vol. IV.

[4] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 766; for discussions in Council *see ibid*, Supplement, 1879, pp. 595 and 743; *ibid*, 1880, pp. 515 and 556; and *ibid*, 1881, pp. 1047 and 67.

[5] The Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutia Nagpur Division, namely:—

the Districts of Hazáribágh, Lohárdága and Mánbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohárdaga District included at this time the Palamau District, which was separated in 1894; Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

X of 1865.

Addition of section after section 235 of Succession Act.

2. After section 235 of the Indian Succession Act, 1865,[1] the following section shall be added:—

Power to appoint Delegate of District Judge to deal with non-contentious cases.

[2]"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called District Delegates."

Addition of section after section 241 of same Act.

3. After section 241 of the said Act the following section shall be added:—

Probate and letters of administration may be granted by Delegate.

[3]"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such delegate."

Addition to sections 244 and 246 of same Act.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

[4]"and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act the following section shall be substituted:—

Caveats against grant of probate or administration.

[5]"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Amendment of section 253 of same Act.

6. In section 253 of the said Act,[6] after the word "Judge" the words "or officer" and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

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[1] General Acts, Vol. I.
[2] *Cf.* the Probate and Administration Act, 1881 (V of 1881), s. 52, *supra*.
[3] „ *ibid*, s 58, *supra*.
[4] „ „ ss. 62 and 64.
[5] „ s. 70.
[6] „ s. 72.

Addition of sections after section 253 of same Act. District Delegate when not to grant probate or administration.

7. After section 253 of the said Act the following sections shall be added :—

[1]"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

[2]"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

[3]"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Amendment of sections 254, 255 and 308 of same Act.

8. In the said Act, sections 254 and 255, respectively,[4] after the words "I, Judge of the District of ," the words "[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)]", and in section 308,[5] after the words "District Judge, by whom" the words "or by whose District Delegate," shall be inserted.

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[1] *Cf.* the Probate and Administration Act, 1881 (V of 1881), s. 73.
[2] " " " " s. 74.
[3] " " " " s. 75.
[4] " " " " ss. 76 and 77.
[5] " " " " s. 127.

Introduction of the words "or District Delegate" in certain sections of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words, "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words [1] "or District Delegate" shall be inserted respectively.

ACT No. IX OF 1881.[2]

[*25th February 1881.*]

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindus, Muhammadans and Buddhists are exempted from the Preamble operation of certain provisions of the Adminstrator General's Act, 1874,[3] but are subject to the operations of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindus, Muhammadans and Buddhists, and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

XI of 1874.

Short title. Commencement.

1. This Act may be called the Administrator General's Act, 1881: and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Act No. II of 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After sections 23 of the same Act the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property, and estate, moveable or immoveable, of the deceased throughout

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[1] *Cf.* the Probate and Administration Act, 1881 (V of 1881), ss. 64, 69, 76, 77 and 81.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 201; for Proceedings in Council, *see ibid*, Supplement, pp. 1151, 1207, and *ibid*, 1881, p. 246.

This Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohardaga District included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

As to extension of the Act as part of the principal Act (II of 1874), *see* footnote to that Act in General Acts, Vol. II.

[3] General Acts, Vol. II.

such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same. Distribution of assets.

4. For section 28 of the same Act the following section shall be substituted:—

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. [*Amendment of sections 36 and 37 of same.*] *Rep. by the Probate and Administration Act, 1890, s. 11 (2), and the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 38 of same.

6. In section 38 of the same Act, for the words "such certificate" the words "certificate under section 36 or 37" shall be substituted; [1] * * * * *

New section inserted after section 55 of same. Commission on assets collected

7. After section 55 of the same Act the following section shall be inserted:—

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration

[1] The words "and the words 'which oath or affirmation the Administrator General is hereby authorised to administer or take' shall be repealed" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate." beyond Presidency.

8. Before section 61 of the same Act the following section shall be inserted :— New section inserted before section 61 of same.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question." Power to examine on oath.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act. Saving of letters and certificates already granted.

ACT No. XI OF 1881.[1]

[*25th February 1881.*]

An Act to give power to prohibit the levy of municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Municipal Taxation Act, 1881. Short title.

It extends to the whole of British India; Local extent.

and shall come into force at once. Commencement.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force. "Municipal Committee" defined.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 193; for Proceedings in Council, *see ibid*, Supplement, pp. 904 and 915; and *ibid*, 1881, Supplement, p. 250. The Act has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I; Bur. Code.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit[1] the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879,[2] or the Indian Articles of War,[3] who is compelled by the exigencies of military duty to reside within the limits of a municipality; or V of 1869.

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary State in Council to pay taxes referred to in section 3, clause (*a*).

[4] **4.** So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

[4] **5.** So long as any order made under section 3, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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[1] For instance of such orders relating to the Military, *see* Gen. R. and O.; Gazette of India, 1907, Pt. I, p. 336; for exemption of bicycles and tricycles used by non-commissioned officers and soldiers, (1) in the City of Bombay, *see* Gazette of India, 902, Pt. I, p. 59, (2) in the City of Madras and the Municipality of Ootacamund, *see ibid*, 1904, Pt. I, p. 187.

[2] *See* now the Army Act (44 & 45 Vict., c. 58), s. 191 (3), Coll. Stat. Vol. II, Ed. 1899.

[3] General Acts, Vol. II.

[4] Nothing in ss. 4 and 5 apply to any area subject to a Municipal Committee which is comprised in a cantonment, *see* s. 20 (2) of the Cantonments Act, 1889 (XIII of 1889), General Acts, Vol. IV.

THE INDIAN FACTORIES ACT, 1881.

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ACT No. XV OF 1881.[1]

[*15th March, 1881.*]

An Act to regulate labour in Factories.

Preamble. WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preliminary.

Short title and local extent. 1. This Act may be called the Indian Factories Act, 1881.

It applies to the whole of British India * * * *.[2]

Interpretation-clause. 2. In this Act, unless there is something repugnant in the subject or context,—

"factory" "factory" means any premises (other than indigo factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(*a*) wherein steam, water or other mechanical power is used in aid of any such process, and

[3][(*b*) wherein, subject to the provisions of section 20, not less than fifty persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and]

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

"child"; "child" means a person under the age of [4][fourteen] years;

"mill-gearing"; "mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving-strap or band, by which the motion of the first moving power is communicated to any machine:

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 946; for the Report of the Select Committee, *see ibid*, 1880, Pt. V, p. 127; for discussions in Council, *see ibid*, 1879, Supplement, pp. 1285 and 1382, and *ibid*, 1881, Supplement, p. 385.

References to this Act are to be read as references to the Act as amended by the Indian Factories Act, 1891 (XI of 1891), *see* s. 19, Act XI, General Acts, Vol. IV.

[2] The words "and shall come into force on the first day of July, 1881," were repealed by the Indian Factories Act, 1891 (XI of 1891), s. 2, General Acts, Vol. IV.

[3] Cl. (*b*) was substituted for the original clause by the Indian Factories Act, 1891 (XI of 1891), s. 3, *ibid*. That clause ran as follows:—"wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and"

[4] The word "fourteen" was substituted for the word "twelve" by the Indian Factories Act, 1891 (XI of 1891), s. 5, *ibid*.

a [1][person] who works in a factory, whether for wages or not, *[2] in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act. "employed."

Inspectors and certifying Surgeons.

Inspectors.

3. [3]The Local Government may in its discretion, by notification[4] in the official Gazette, appoint, [5][by name or by office,] such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any persons so appointed.

[6][The District Magistrate shall, in virtue of his office, be an Inspector of all factories, if any, in his district.]

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code,[7] and shall be officially subordinate to such authority as the Local Government may from time to time indicate in this behalf. XLV of 1860.

Powers of Inspectors.

4. An Inspector of Factories may, within the local limits for which he is appointed,—

[8](*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

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[1] The word "person" was substituted for the word "child" in the definition of the word "employed" by the Indian Factories Act, 1891 (XI of 1891), s. 4 (*1*), General Acts, Vol. IV. *Cf.* the Factories and Workshop Act, 1878 (41 & 42 Vict., c. 16), s. 94.

[2] The word "either," in the definition of the word "employed," was repealed by the Indian Factories Act, 1891 (XI of 1891), s. 4 (2), General Acts, Vol. IV.

[3] *Cf.* the Factories Act, 1833 (3 & 4 Will. IV., c. 103), s. 17. This Act had, however, at this period been repealed some time.

[4] For notifications issued under this section for—
(*1*) Ajmer Merwara, *see* Aj. R. and O.
(*2*) Burma, *see* Burma Gazette, 1908, Pt. I, p. 101;
(*3*) Bombay, *see* Bom. R. and O.; Bombay Gazette, 1902, Pt. I, pp. 1215 and 1669;
(*4*) Madras, *see* Mad. R. and O.;
(*5*) United Provinces, *see* U. P., R. and O.;
(*6*) Assam, *see* Assam Manual of Local Rules and Orders; and
(*7*) Punjab, *see* Punj. R. and O.

[5] These words in s. 3 were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 6 (*1*), General Acts, Vol. IV.

[6] This paragraph was substituted for the original paragraph by the Indian Factories Act, 1891 (XI of 1891), s. 6 (*2*). That paragraph ran as follows:—
"In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the district."

[7] General Acts, Vol. I.

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the [1][purposes] of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act,—

until the age of such person has been certified in the manner hereinafter provided to be above [2][nine] years, or

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above [3][fourteen] years.

Certifying surgeons.

5. The civil surgeon or such other person practising medicine or surgery as the Local Government may from time to time appoint in this behalf for any local area [4](hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, [5][and on payment by such person of such fee, if any, as may from time to time be prescribed by the Governor General in Council by notification in the Gazette of India,] examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below [2][nine] years, or [3][fourteen] years, as the case may be.

All Operatives.[6]

Limited stoppage of work

[6]**5A.**[7] (*1*) In every factory, except a factory in which a system of employment in shifts or sets approved by the local Inspector is in force, there

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[1] The word "purposes" was substituted for the word "provisions" by the Indian Factories Act, 1891 (XI of 1891), s. 7, General Acts, Vol. IV.

[2] The word "nine" was substituted for the word "seven" by the Indian Factories Act, 1891 (XI of 1891), s. 9, *ibid.*

[3] The word "fourteen" was substituted for the word "twelve" by the Indian Factories Act, 1891 (XI of 1891), s. 5, *ibid.*

[4] For notifications issued under this power for—
(*1*) Bombay, *see* Bom. R. and O.;
(*2*) Lower Burma, *see* Bur. R. M.;
(*3*) Madras, *see* Mad. R. and O.; and
(*4*) United Provinces, *see* U. P. R. and O.

[5] These words were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 8, General Acts, Vol. IV. For notification issued under this power, *see* Gazette of India, 1892, Pt. I, p. 67.

[6] This heading was substituted for the original heading to s. 6, and ss. 5A to 11, both inclusive, were substituted for the original ss. 6 to 11, both inclusive, by the Indian Factories Act, 1891 (XI of 1891), s. 10.

[7] The provisions of this section have been declared not to apply to kilns connected with potteries, nor to the Calcutta and Bombay Mints; Gen. R. and O.

shall between noon and two o'clock in the afternoon be a stoppage of work for a full half-hour : daily in certain circumstances.

(*2*) Provided that nothing in this section shall apply to any factory of a class to which the Governor General in Council has, by notification in the Gazette of India, declared this section not to apply.

[1]**5B.** (*1*) No person shall be employed in any factory on a Sunday : Holidays.

(*2*) Provided as follows :—

(*a*) any manager, foreman, mechanic, artisan or labourer may be employed in a factory on a Sunday in examining or repairing, or in supervising or aiding in the examination or repair of, any machinery or other thing whatsoever necessary for the carrying on of the work performed in the factory ;

(*b*) any person may be employed in a factory on a Sunday if he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday :

(*c*) the Local Government may from time to time, by notification in the official Gazette, declare[2] sub-section (*1*) of this section not to apply to any factory or class of factories (the factory or class being described in the notification) in which the work performed—

(*i*) necessitates continuous production for technical reasons, or

(*ii*) supplies the public with articles of prime necessity which must be made every day, or

(*iii*) by its nature cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces ; and

(*d*) the Governor General in Council may from time to time, by notification in the Gazette of India, declare sub-section (*1*) of this section not to apply to factories of any class described in the notification.

Women.

[1]**6.** (*1*) No woman shall be employed before five o'clock in the morning or after eight o'clock in the evening in any factory in which a system Employment of women.

[1] *See* footnote under the heading to section 5 A *supra*.

[2] The provisons of sub-section (*1*) have been declared not to apply to the Bombay Gas Factory and certain other Factories, *see* Bom. R. and O.; for notifications issued under this power for Bengal (Guruli Silk factory, Midnapore) *see* Ben. R. and O., Calcutta Gazette, 1900, Pt. I, p. 421; Lower Burma, *see* Bur. R. M.; Madras, *see* Mad. R and O.; for the Punjab, *see* Punjab Gazette, 1902, Pt. I, p. 401 ; Punj. R. and O.; for the United Provinces ; *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 90 and 91, U. P. Gazette, 1902, Pt. I, p. 58 ; and for Eastern Bengal and Assam, *see* E. B. and A. Gazette, 1908, Pt. II, p. 520.

of employment in shifts or sets approved by the local Inspector is not in force.

(*2*) No woman shall be actually employed in any factory in any one day for more than eleven hours.

(*3*) Every woman shall be allowed an interval or intervals of rest amounting in the aggregate to at least an hour-and-a-half in the day when she is actually employed for eleven hours and to a proportionately less time when she is actually employed for less then eleven hours.

(*4*) The Governor General in Council may from time to time, by notification in the Gazette of India, declare all or any of the foregoing sub-sections of this section not to apply to factories of any class described in the notification or to women employed in any process so described.

Children.

Employment of children.

[1] **7.** (*1*) No child shall be employed in any factory if he is under the age of nine years.

(*2*) No child shall be employed in any factory before five o'clock in the morning or after eight o'clock in the evening.

(*3*) No child shall be actually employed in any factory for more than seven hours in any one day.

(*4*) Every child who is actually employed in any factory for six hours in any one day shall be allowed an interval or intervals of rest amounting in the aggregate to at least half-an-hour.

Prohibition of employment of child in certain dangerous work.

[1] **8.** No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

[1] **9.** The Local Government may direct any occupier of a factory to keep[2], in such form and with such particulars as such Government may from time to time prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Women and Children.

Provisions

[1] **10.** (*1*) The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the

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[1] *See* footnote under the heading to section 5A, *supra*.

[2] For notification issued under this power, for Lower Burma, *see* Bur. R. M. *See* also note to s. 18, *infra*, as to Bombay and the Punjab.

district in which the factory is situated, showing the times at which such intervals as are required by section 6, sub-section (*3*), and section 7, sub-section (*4*), to be allowed to women and children, respectively, shall be allowed, and the length of each interval. supplementary to sections 6 and 7.

(*2*) A woman or child shall not be deemed to be actually employed within the meaning of section 6 or section 7 during any such interval as aforesaid.

[1] **11.** No occupier of a factory shall employ therein on any day any woman or child who has to his knowledge already been employed on the same day in any other factory. Prohibition of employment of women or child in two factories on same day.

Fencing.

12. (*a*) Every fly-wheel directly connected with a steam-engine, * [2] water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel, Fencing.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (3) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.[3]

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during the forty-eight hours [4][next] after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of [5][the accident] to such authorities in such form within such time as the Local Government may from time to time by rule direct.[6] Notice to be given of accidents.

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[1] *See* footnote under the heading to section 5A, *supra*.

[2] The word "or" was repealed by the Indian Factories Act, 1891 (XI of 1891), s. 11, General Acts, Vol. IV.

[3] For notification issued under this power, (1) in Burma, *see* Bur. R. M., (2) in the Punjab, *see* Punj. R. and O.

[4] The word "next" was inserted by the Indian Factories Act, 1891 (XI of 1891), s. 12, General Acts, Vol. IV.

[5] These words were substituted for the words "such accident" by the Indian Factories Act, 1891 (XI of 1891), s. 12, *ibid.*

[6] For notification issued under this power in Burma, *see* Bur. R. M. *See* also note to s. 18, *infra*, as to Bombay; and as to Bengal *see* Calcutta Gazette, 1892, Pt. I, p. 461.

(*Notices. Penalties.*)

Person beginning to occupy factory to give notice.

[1]14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory [2][and of] the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person * * [3] under whom the business of the factory is to be carried on.

Penalties.

Penalties.

[4]15 (*1*) Any person who, in breach of this Act or of any order or rule made thereunder,—

(*a*) employs any person in any factory;

(*b*) allows any child to perform the work forbidden by, or to work in contravention of, section 8;

(*c*) neglects to keep a register in manner prescribed under section 9;

(*d*) neglects to set up or maintain the notice required by section 10, sub-section (*1*);

(*e*) neglects to fence any machinery or mill-gearing in any factory;

(*f*) neglects to maintain a supply of water for the use of persons employed in any factory;

(*g*) neglects to ventilate any factory or to keep any factory in a cleanly state and free from effluvia arising from any drain, privy or other nuisance;

(*h*) suffers any factory to be so overcrowded, while work is carried on therein, as to be injurious to the health of the persons employed therein; or

(*i*) neglects to send any notice or furnish any return,

shall be punished with fine which may extend to two hundred rupees:

Provided that—

(*i*) no prosecution under this sub-section shall be instituted except by, or with the previous sanction of, the local Inspector; and

(*ii*) no person shall be liable under this sub-section to more than one penalty for any one description of offence committed on the same day except where two or more persons are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each person so employed.

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[1] *Cf.* the Factories and Workshops Act, 1878 (41 & 42 Vict., c. 16), s. 75.

[2] These words were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 13 (*1*), General Acts, Vol. IV.

[3] The words "if any" were repealed by the Indian Factories Act, 1891 (XI of 1891), s. 13 (*2*) *ibid.*

[4] This section was substituted for the original s. 15 by the Indian Factories Act, 1891 (XI of 1891), s. 14, *ibid.*

(*2*) Any person who corruptly uses or attempts to use, as a certificate granted to himself under section 5, a certificate granted to another person under that section, or who having procured a certificate under the said section, corruptly allows it to be used, or an attempt to use it to be made, by another person, shall be punished with fine which may extend to twenty rupees.

Burden of proof as to age.

[1]**16.** Where an act or omission would, if a person were under [2][nine] or [3][fourteen] years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying Surgeon's declaration in writing.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act or orders or rules thereunder.

[4]**17.** Every occupier of a factory shall be deemed primarily liable for any breach therein of this Act or of any order or rule made thereunder; but he may discharge himself from such liability by proof that such breach was committed by some other person without his knowledge or consent, and in that case the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

[5]**18.** (*1*) Subject to the control of the Governor General in Council, the Local Government may from time to time make rules consistent with this Act to provide for [6]—

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[1] *Cf.* the Factories Act, 1856 (19 & 20 Vict., c. 38), s. 53; and the Factories and Workshops, Act, 1878 (41 & 42 Vict., c. 16), s. 92.

[2] The word "nine" was substituted for the word "seven" by the Indian Factories Act, 1891 (XI of 1891), s 9, General Acts, Vol. IV.

[3] The word "fourteen" was substituted for the word "twelve" by the Indian Factories Act, 1891 (XI of 1891), s. 5, *ibid.*

[4] This section was subs ituted for the original s. 17 by the Indian Factories Act, 1891 (XI of 1891), s. 15, *ibid.*

[5] This section was substituted for the original s. 18 by the Indian Factories Act, 1891 (XI of 1891), s. 16 (1), *ibid.*

[6] For rules made for—
(*1*) Assam, *see* the Assam Manual of Local Rules and Orders, Ed. 1893, page 423;
(*2*) Lower Burma, *see* Bur. R. M. and Burma Gazette, 1904 and 1908, Pt. I., pp. 548 and 18, respectively,
(*3*) for Bombay (under this section and ss. 9 and 13), *see* Bom. R. and O.; Bombay Gazette, Pt. I, p. 1676; *ibid*, 1902, Pt. I, p. 1439;
(*4*) Central Provi ces, *see* Central Provinces Gazette, 1906, Pt. III, p. 132; *ibid*, 1907, 11th March;
(*5*) Madras, *see* Mad. R. and O.; Fort St. George Gazette, 1901, Pt. I, p. 1523;
(*6*) United Provinces, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 91 and 92, United Provinces Gazette, 1902, Pt. I, p. 795;
(*7*) Bengal, *see* Calcutta Gazette, 1892, Pt. I, p. 461; *ibid*, 1902, Pt. I, p. 1811 (not affecting Jute Mills, *see ibid*, 1903, Pt. I, p. 1405);
(*8*) Punjab, in conjunction with section 9, for the better control of factories, *see* Punjab Gazette, 1908, Pt. I, p. 399; *ibid*, 1901, Pt. I, p. 1073 [for rules under clause (*a*)];
(*9*) Ajmer-Merwara, *see* Aj. R. and O.

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the water-supply to be maintained for the use of persons employed in factories;

(*c*) the ventilation of factories and their cleanliness (including lime-washing, painting, varnishing and washing) and freedom from effluvia arising from any drain, privy or other nuisance;

(*d*) the prevention of such overcrowding of factories, while work is carried on therein, as is likely to be injurious to the health of the persons employed therein;

(*e*) the inspection of factories;

(*f*) the manner in which appeals under this Act are to be presented and heard; and

(*g*) otherwise carrying out the purposes of this Act.

(*2*) The Governor General in Council may from time to time make rules[1] requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of this Act.

(*3*) Such rules shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall thereupon have the force of law.

(*4*) Before making rules under clause (*b*), clause (*c*) or clause (*d*) of sub-section (*1*) of this section, the Local Government, and before making rules under sub-section (*2*) of this section the Governor General in Council, shall publish, in such manner as may in its or his opinion be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date (not less remote than two months from the publication of the notice) at or after which the draft will be taken into consideration, and shall consider any objection or suggestion which may be received from any person with respect to the draft before the date so specified.

Crown factories.

[2]**19.** This Act shall apply to factories belonging to the Crown: Provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any [3] * factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit[4].

Power to Local Government to

[5] **20.** (*1*) Notwithstanding anything in clause (*b*) of the definition of the word "factory" in section 2, the Local Government may from time to time,

[1] For rules made by the Governor General in Council under this section, *see* Gazette of India 1903, Pt. I, p. 532.

[2] *Cf.* the Factories and Workshops Act, 1878 (41 & 42 Vict., c. 16), s. 93.

[3] The word "such" was repealed by Act XI of 1891, s. 17.

[4] For such an exemption, *see* U. P. R. and O.

[5] S. 20 was added by the Indian Factories Act, 1891 (XI of 1891), s. 18, General Acts, Vol. IV.

by notification in the official Gazette, declare any premises, or premises of any class, which fulfil the other conditions of the said definition, to be a factory for all the purposes of this Act,[1] or for such of those purposes as may be specified in the notification, if the number of persons simultaneously employed in the premises on any day in any manual labour in, or incidental to, any such process as is referred to in the said clause (*b*) is less than fifty and not less than twenty. extend definition of "factory."

(*2*) The Local Government may,[2] by such notification, fix any number below fifty and not below twenty as the number of persons whose simultaneous employment as aforesaid is to be held to subject premises, as a factory, to all or any of the provisions of this Act and of the orders and rules made thereunder.

ACT No. XVI OF 1881.[3]

[*15th March 1881.*]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows :— Preamble.

1. This Act may be called the Obstructions in Fairways Act, 1881; and it shall come into force at once. Short title. Commencement.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,— Local Government empowered to remove or destroy obstruction in fairway.

(*a*) cause such thing or any part thereof to be removed; or

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[1] For notification issued for Bombay under this sub-section, *see* Bom. R. and O.

[2] For notification issued under this section in Burma, *see* Bur. R. M.; in the United Provinces, *see* United Provinces Gazette, 1907, Pt. I, p. 128; in Madras, *see* Mad., R. and O.; in Bengal, *see* Ben. R. and O.; in the Punjab, see Punj. R. and O.; in the United Provinces, *see* U. P. R. and O.

[3] For the Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 3; for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 19 and 405.

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate[1] or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, etc.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

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[1] *See* s. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may, from time to time, by notification [1] in the Gazette of India, make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes [2] and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

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[1] For such notification, (1) for Madras, *see* Mad. R. and O., (2) for Bombay, *see* Bom. R. and O.

[2] *See* the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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ACT No. XXVI OF 1881.[1]

[*9th December 1881.*]

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Negotiable Instruments Act, 1881.

Local extent. Saving of usages relating to hundis, etc.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21,[2] or affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

III of 1871.

Commencement.

2. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Interpretation-clause.

3. In this Act—

"Banker."

"banker" includes also persons or a corporation or company acting as bankers: and

"Notary public."

"notary public" includes also any person appointed by the Governor General in Council to perform the functions of a notary public under this Act.

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1 For Statement of Objects and Reasons, *see* Gazette of India, 1876, p. 1836; for the Reports of the Select Committee, *see ibid*, 1877, Pt. V, p. 321; 1878, Pt. V, p. 145; 1879, Pt. V, p. 75; 1881, Pt. V, p. 85; for discussions in Council, *see ibid*, 1876, Supplement, p. 1081; and *ibid*, 1881, Supplement, p. 1409.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) s. 4 (1) and Sch. I, Bur. Code.

For summary procedure on negotiable instruments, *see* the Code of Civil Procedure, 1908, (Act V of 1908), Sch. I, Order XXXVII, General Acts, Vol. VI.

2 *See* now the Indian Paper Currency Act, 1905 (III of 1905), s. 24, General Acts, Vol. IV.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

Promissory note

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

"Bill of exchange."

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section 4, although he is mis-named or designated by description only.

"Cheque."

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer." "Drawee."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawee in case of need."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in any case of need, such person is called a "drawee in case of need."

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf he *is* called the "acceptor."

"Acceptor for honour."

[1] [When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Payee."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course."

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

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[1] These words were substituted for the words "When acceptance is refused and the bill is protested for non-acceptance," by the Negotiable Instruments Act, 1885 (II of 1885), s. 2, *infra*.

Foreign instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

"Negotiable instrument."

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person, or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Negotiation.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement.

15. [1] When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument.

"Indorsee."

Ambiguous instruments.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instruments, in the capacity in which he signed the same, to any holder in due course for

[1] For an exception to s. 15 in the case of Government securities, *see* the Indian Securities Act 1886 (XIII of 1886), s. 6, *infra*.

such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight." "On presentment." "After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance, or noting for non-acceptance or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(*a*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government,[1] by notification in the Official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, etc., promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, pro-

[1] The powers of a Local Government under this explanation have been delegated to the Commissioner in Sindh by the Government of Bombay under section 2 of Act V of 1868, *see* ombay Gazette, 1903, Pt. I, p. 449.

vided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872,[1] would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. IX of 1872.

Discharge of indorser's liability.

40. When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him,

[1] General Acts, Vol. II.

may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money-consideration.

44. When the consideration for which a person signed a promissory not, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. A accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill.

[1][**45A.** Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

[1] S. 45A was inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 3, *infra*.

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer :—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several join makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument indorsed in blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by decease.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when overdue.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer

to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it isdrawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by

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[1] This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 4, *infra*.

or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

[1][Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

69. A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc., has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

72. [2][Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the

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[1] This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 4, *infra*.

[2] These words and figures were inserted by the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897), s. 2, General Acts, Vol. IV.

relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment,

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

78. Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532,[1] be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

by cancellation;

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

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[1] See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXXVII, rule 2, General Acts, Vol. VI.

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge ; by release ;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon. by payment.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder. Discharge by allowing drawee more than twenty-four hours to accept.

84.[1] Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid. When cheque not duly presented and drawer damaged thereby.

(*2*) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(*3*) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

(*a*) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

85. Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Cheque payable to order.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes Parties not consenting discharged

[1] This section was substituted for the original s. 84 by the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897), s. 3, General Acts, Vol. V.

The original section was as follows—"When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder."

by qualified or limited acceptance.

a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

Of Notice of Dishonour.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a

notice of dishonour.

reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

Of Noting and Protest.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security. Protest for better security.

101. A protest under section 100 must contain— Contents of protest.

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[1][A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest. Notice of protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity. Protest for non-payment after dishonour by non-acceptance.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn. Protest of foreign bills.

[1] This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 5, *infra*.

(Chapter IX.—Of Noting and Protest. Chapter X.—Of Reasonable time. Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need.)

When noting equivalent to protest.

[1]**104A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

CHAPTER X.

Of Reasonable Time.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

Of Acceptance and Payment for Honour and Reference in Case of Need.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. * * * * * * *[2]

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[1] S. 104A was inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 6, *infra*.

[2] Portion repealed by the Negotiable Instruments Act, 1885 (II of 1885), s. 7, has been omitted. That portion was as follows:—

"Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity."

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need.)

How acceptance for honour must be made.

109. A person desiring to accept for honour must, [1][by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour. * * * * * * * * * [2]

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying [3][or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

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[1] These words were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and" by the Negotiable Instruments Act, 1885 (II of 1885), s. 8, *infra*.

[2] The words "and such declaration must be recorded by the notary in his register" were repealed by the Negotiable Instruments Act, 1885 (II of 1885), s. 8, *infra*.

[3] These words were inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 9, *infra*.

(*Chapter XII.—Of Compensation. Chapter XIII.—Special Rules of Evidence.*)

CHAPTER XII.

Of Compensation.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532,)[1] be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

Special Rules of Evidence.

Presumptions as to negotiable instruments—of consideration;

118. Until the contrary is proved, the following presumptions shall be made:—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted,

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[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXXVII, rule 2 General Acts, Vol. VI.

indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date; — as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; — as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity; — as to time of transfer;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; — as to order of indorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped; — as to stamp;

(g) that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him. — that holder is a holder in due course;

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved. — Presumption on proof of protest.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. — Estoppel against denying original validity of instrument.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same. — Estoppel against denying capacity of payee to indorse.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. — Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

Of Crossed Cheques.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, — Cheque crossed generally.

or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of duecourse.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable".

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

(Chapter XIV.—Of Crossed Cheques. Chapter XV.—Of Bills in Sets. Chapter XVI.—Of International Law.)

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

Of Bills in Sets.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill favour of different persons, he and the subsequent indorsers of each part are iable on such part as if it were a separate bill.

Holder of first acquired part entitled to all.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

Of International Law.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the

governs dishonour.

place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, etc., out of British India, but in accordance with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.[1]

NOTARIES PUBLIC.

Power to appoint notaries public.

138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint[2] any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to make rules for notaries public.

139.[3] The Governor General in Council may, from time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

SCHEDULE.

[ENACTMENTS REPEALED.]

Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

[1] Ch. XVII was inserted by the Negotiable Instruments Act 1885 (II of 1885), s. 10, *infra*.

[2] For appointment of notaries public within districts and sub-districts of the Madras Presidency, *see* Mad. R. and O.; Gazette of India, 1904, Pt. I, p. 824; in Bombay, *see* Bom. R. and O.

[3] For rules under this section *see* Notification No. 1433, dated 30th September 1886, Gazette of India, 1886, Pt. I, p. 548. On the extension of the Act to Upper Burma, similar rules were framed with respect to that Province, *see* Notification No. 489, dated 11th May 1894, Burma Gazette, Pt. II, p. 109, Bur. R. M.

THE INDIAN TRUSTS ACT, 1882.

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THE SCHEDULE.

ACT No. II OF 1882[1].

[*13th January 1882.*]

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees ; It is hereby enacted as follows :— Preamble.

[1] For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, *see* Gazette of India, 1880, Supplement, p. 104, and for the Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 476; for Report of the Select Committee, *see ibid*, Supplement, 1881, p. 766; for further Report of the Select Committee, *see ibid*, Supplement, 1882, p. 67; for Proceedings in Council, *see ibid*, Supplement, 1881, p. 687; and *ibid*, Supplement, 1882, p. 68.

CHAPTER I.

PRELIMINARY.

Short title. Commencement. Local extent.

1. This Act may be called the Indian Trusts Act, 1882: and it shall come into force on the first day of March, 1882.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the [1] North-Western Provinces and the Punjab, the Chief Commissioners of [1] Oudh, the Central Provinces, Coorg and Assam; and the Local Government may from time to time, by notification [2] in the official Gazette, extend it to any other part of British India.

Savings.

But nothing herein contained affects the rules of Mahammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the said day.

Repeal of enactments.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

Interpretation-clause—"trust":

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust":

"trustee": "beneficiary": "trust-property": "beneficial interest": "instrument of trust": "breach of trust":

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

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[1] The reference to the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh should be construed as referring to the Lieutenant-Governor of the United Provinces of Agra and Oudh; *see* the United Provinces (Designation) Act, 1902 (VII of 1902), s. 2, General Acts, Vol. V.

[2] The Act has, under this section, been extended—

(*a*) to the whole of the Bombay Presidency, including the Scheduled Districts—*see* Notification No. 4802, printed, Bombay Gazette, 1891, Pt I, p. 743;

(*b*) to the area included within the limits of Rangoon Town as from time to time defined for the purposes of the Lower Burma Courts Act, 1900 (VI of 1900), Bur. Gazette, 1904, Pt. I, p. 628.

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"registered": and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force:

"notice." a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872[1], section 229;

IX of 1872.

Expressions defined in Act IX of 1872. and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

Lawful purpose. **4.** A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations.

(*a*) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(*c*) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of immoveable property. Trust of moveable property. **5.** No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

[1] General Acts, Vol. II.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(*a*) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(*e*) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

7. A trust may be created—

Who may create trusts.

(*a*) by every person competent to contract,[1] and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

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[1] *See* s. 11 of the Indian Contract Act, 1872 (IX of 1872), General Acts, Vol. II.

No one is bound to accept a trust. No one bound to accept trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance. Acceptance of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him. Disclaimer of trust.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(*a*) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(*b*) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c*) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. Trustee to execute trust.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(*a*) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b*) A, a trustee, of certain for land X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(*a*) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration.

The trust property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,[1] the trustee's duty is to cause the instrument to be registered. III of 1877.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(*a*) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(*b*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

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[1] *See* now the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

(*c*) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d*) A, a trustee directed to sell the trust-propetry by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e*) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(*f*) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g*) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the persona security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(*h*) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(*a*) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(*b*) A bequeaths to B his three leasehold houses in Calcutta and all the furniture there in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to be impartial.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

Trustee to prevent waste.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Accounts and information.

19. A trustee is bound (*a*) to keep clear and accurate accounts of the trust-property, and (*b*), at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(*a*) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(*d*) [1] [in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;]

(*e*) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(*f*) on any other security expressly authorized by the instrument of trust, or by any rule [2] which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*), and (*f*) shall be made without his consent in writing.

Mortgage of land pledged to Govern-

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on

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[1] Substituted by section 2 of the Indian Trust (Amendment) Act, 1908 (III of 1908), General Acts, Vol. VI. The original clause was as follows:—

"in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India."

[2] For rules made by the Chief Court of the Punjab, *see* Punjab Gazette, 1906, Pt. III, p. 388; and by the Chief Court of Lower Burma, *see* Burma Gazette, 1903, Pt. IV, p. 172; *ibid.*, 1905, Pt. IV, p. 515.

a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871[1], or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

ment under Act XXVI of 1871.
Deposit in Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Sale by trustee directed to sell within specified time.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(*a*) where he has actually received interest:

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(*c*) where the trustee ought to have received interest, but has not done so:

(*d*) where he may be fairly presumed to have received interest.

He is liable, in case (*a*), to account for the interest actually received, and, in cases (*b*), (*c*) and (*d*), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(*e*) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(*f*) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

[1] *See* now the Land Improvement Loans Act, 1883 (XIX of 1883), *infra*.

Illustrations.

(*a*) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(*c*) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*) Trust-property is invested in one of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off allowed to trustee.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

Non-liability for predecessor's default.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for co-trustee's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(*b*) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith;

or allows him to retain it longer than the circumstances of the case reasonably require:

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor

for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

Right to title-deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to reimbursement of expenses.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to indemnity from gainer by breach of trust.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in manage-

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or adminis-

tration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. ment of trust-property.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect. Right to settlement of accounts.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract. General authority of trustee.

* * * * * * *[1]

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs. Power to sell in lots, and either by public auction or private contract.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or Power to sell under special conditions. Power to buy in and re-sell.

[1] The second paragraph of this section was repealed by the Repealing and Amending Act, 1891 (XII of 1891). That paragraph ran as follows:—

"Every trustee in the actual possession or receipt of the rents and profits of land, as defined in the Land Improvement Act, 1871, shall, for the purposes of that Act, be deemed to be a landlord in possession."

vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time allowed for selling trust-property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(*a*) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(*b*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to convey.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to vary investments.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life or for any greater estate, no such change of investment shall be made without his consent in writing.

Power to apply property of minors, etc., for their maintenance, etc.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable

expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, etc.

43. Two or more trustees acting together may, if and as they think fit,—

(*a*) accept any composition or any security for any debt or for any property claimed;

(*b*) allow any time for payment of any debt;

(*c*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(*d*) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be

one disclaims or dies.

exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's powers by decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

Of the Disabilities of Trustees.

Trustee cannot renounce after acceptance.

46. A trustee who has accepted the trust cannot afterwards renounce it except (*a*) with the permission of a principal Civil Court of original jurisdiction, or, (*b*) if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(*a*) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(*b*) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(*c*) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

(Chapter V.—Of the Disabilities of Trustees. Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

Trustee may not charge for services.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

Trustee may not use trust-property for his own profit.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Co-trustees may not lend to one of themselves.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

Of the Rights and Liabilities of the Beneficiary.

Rights to rents and profits.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(*b*) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, &c.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust.

59. When no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent

circumstances; and unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(*a*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(*b*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c*) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to any act of duty.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(*a*) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for injunction to restrain A from making the sale.

Wrongful purchase by trustee.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or

retransferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trustee or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust-property — into the hands of third persons; into that into which it has been converted.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(*a*) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes, and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872[1], section 108, or the liability of a person to whom a debt or charge is transferred.

IX of 1872.

[1] General Acts, Vol. II.

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(*a*) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(*a*) joins in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

(*Chapter VI.—Of the Rights and Liabilities of the Beneficiary. Chapter VII.—of Vacating the Office of Trustee.*)

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. A trustee may be discharged from his office only as follows:—

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, etc.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to con-

tract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rules for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (*b*) to the wishes of the person, if any, empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust, and, (*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

(Chapter VIII.— Of the Extinction of Trusts. Chapter IX.—Of certain Obligations in the Nature of Trusts.)

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

(*a*) when its purpose is completely fulfilled; or

(*b*) when its purpose becomes unlawful; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(*a*) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(*c*) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*d*) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure[1], section 317, or Act No. XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*[2], section 36.

Trust incapable of execution or executed without exhausting trust-property.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(*a*) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b*) A transfers Rs. 10 000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(*c*) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the

[1] *See* now Act V of 1908, General Acts, Vol. VI.

[2] Ben. Code.

worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

Transfer for illegal purpose.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Bequest for illegal purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Transfer pursuant to rescindable contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Debtor becoming creditor's representative.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage gained by fiduciary.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(*a*) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b*) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(*c*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*d*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*e*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(*f*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*g*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*h*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

89. Where by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

Illustrations.

(*a*) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(*b*) A village belongs to a Hindu family. A, one of its members, pays nazrána to Government and thereby procures his name to be entered as the inámdár of the village. A holds the village for the benefit of himself and the other members.

(*c*) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific

notice of existing contract.

performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several comp unding creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands the assets so distributed.

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(*c*) A makes a gift of a lákh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's duties, liabilities and disabilities.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is intitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of right of *bonâ fide* purchasers.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

STATUTE.

Year and Chapter.	Short title.	Extent of repeal.
29 Car. II, c. 3 . .	The Statute of Frauds . .	Sections 7, 8, 9, 10 and 11.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII of 1866	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In section * *[1] 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or".
II of 1877 . . .	The Specific Relief Act, 1877 .	In section 12 the first illustration.

THE TRANSFER OF PROPERTY ACT, 1882.

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[1] The figures "39" and by implication the word "and", also, were repealed by the Repealing and Amending Act, 1891 (XII of 1891), *see* the First Schedule.

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THE SCHEDULE.

ACT No. IV OF 1882.[1]

[*17th February 1882.*]

An Act to amend the law relating to the Transfer of Property by Act of Parties.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Transfer of Property Act, 1882.

Commencement.

It shall come into force on the first day of July 1882.

Extent.

It extends in the first instance to the whole of British India[2] except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Punjab and the Chief Commissioner of British Burma[3].

But any of the said Local Governments may, from time to time, by notification in the local official Gazette,[4] extend this Act [5][or any part thereof] to the whole or any specified part of the territories under its administration.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 171; for the Preliminary Report of the Select Committee, *see ibid*, 1878, Pt. V, p. 48; for the further Report of the Select Committee, *see ibid*, 1879, Pt. V, p. 106; for the third Report of the Select Committee, *see ibid*, 1881 Pt. V, p 395; for Proceedings in Council, *see ibid* 1877, Supplement, p. 1568; *ibid*. 1877, Supplement, p. 1690; *ibid*. 1882, Supplement, pp. 96 and 169.

As to application of certain provisions of the Act to all cantonments in British India, *see* first note under the last paragraph of this section, *infra*.

[2] Act IV of 1882 has ceased to be in force in the Naga Hills District, including the Mokokchang Subdivision, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills, and the Mikir Hills Tract—*see* Assam Rules Manual, Ed. 1893, pp. 408, 409, Pt. II, pp. 212 and 705, respectively.

[3] This reference to British Burma should now be read as referring to Lower Burma—*see* the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, and now the Burma Laws Act, 1898 (XIII of 1898), by which Act XX of 1886 has been repealed. The Chief Commissioner of British Burma is now Lieutenant-Governor of Burma—*see* Proclamation, dated 9th April 1897, in Gazette of India, 1897, Pt. I, p. 211.

[4] Act IV of 1882 has been extended (from 1st January 1893) to—

(i) the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay—*see* Bombay Government Gazette, 1892, Pt. I, p. 1071; and

(ii) the area included within the limits of Rangoon Town as from time to time defined for the purposes of the Lower Burma Courts Act, 1900, and within the municipalities of Moulmein, Bassein and Akyab *see* Burma Gazette, 1904, Pt. I, pp. 628 and 684.

Ss. 54, 59, 107, 117, 118, and 123 have been extended to the whole of Lower Burma except the areas excluded from time to time from the operation of the Indian Registration Act, 1877, *see* Burma Gazette 1904, Pt. I, p. 684. [The reference to the Indian Registration Act, 1877, should now be read as referring to the Indian Registration Act, 1908.]

The Act has been repealed as to Crown grants, by the Crown Grants Act, 1895 (XV of 1895).

[5] Inserted by the Transfer of Property (Amendment) Act, 1904 (VI of 1904), s. 2, General Acts, Vol. VI.

(*Chapter I.—Preliminary.*)

[1][And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette, exempt,[2] either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

[3][Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,[4] under the power conferred by the first section of that Act or otherwise.]

III of 1877.

Repeal of Acts.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, etc.

(*a*) the provisions of any enactment not hereby expressly repealed :

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or

(*d*) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction :

and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation-clause.

3. In this act, unless there is something repugnant in the subject or context,—

"immoveable property" does not include standing timber, growing crops or grass :

"instrument" means a non-testamentary instrument :

"registered" means registered in British India under the law[5] for the time being in force regulating the registration of documents :

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[1] This clause was substituted for the original clause by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s. 1, *infra*.

[2] No such exemption has yet been made.

[3] This clause was added by Act III of 1885, s. 2, and is to be deemed to have been added from the date on which Act IV of 1882 came into force.

S. 54, paras. 2 and 3, and ss. 59, 107 and 123, extend to every cantonment in British India—*see* the Cantonments Act, 1889 (XIII of 1889), s. 32 (*1*), General Acts, Vol. IV.

[4] See now the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

[5] *See* the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

[1]["actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872,[2] section 229. IX of 1872.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.[2]

[3][And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1877.[1]] III of 1877.

CHAPTER II.[4]

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(*A*) *Transfer of Property, whether moveable or immoveable.*

"Transfer of property" defined.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

What may be transferred.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

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[1] Inserted by s. 2 of the Transfer of Property Act, 1900 (II of 1900), General Acts, Vol. V.

[2] General Acts, Vol. II.

[3] This portion was added by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s. 3, *infra*.

[4] Nothing in Chapter II is to be deemed to affect any rule of Hindu, Muhammadan or Buddhist law—*see* s. 2, *supra*.

(*a*) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue * * *[1] cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) [2] [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872,] or (3) to a person legally disqualified to be transferee.

IX of 1872.

[3] (*i*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.

Persons competent to transfer.

7. Every person competent to contract and entitled to transferable property or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Operation of transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

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[1] The words "for compensation for a fraud or for harm illegally caused" were omitted by s. 3 (i) of the Transfer of Property Act, 1900 (II of 1900), General Acts, Vol. V.

[2] The words "for an illegal purpose" were omitted and these words were inserted instead of them by s. 3 (ii) of Act II of 1900, *ibid.*

[3] Cl. (*i*) was added by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s. 4, *infra*.

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition restraining alienation.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of

such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to take effect on failure of prior transfer.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer in perpetuity for benefit of public.

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Direction for accumulation.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Vested interest.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

When unborn person acquires vested interest on transfer for his benefit.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(*a*) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c*) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

27. Where on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(*a*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(*b*) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another

person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Transfer conditional on performance of act, no time being specified for performance.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, time being specified.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud.

But if no time is specified for performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Election when necessary.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a

reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Apportionment of periodical payments on determination of interest of person entitled.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of benefit of obligation on severance.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(*a*) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(*B*) *Transfer of Immoveable Property.*

Transfer by person authorized only under certain circumstances to transfer.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

Burden of obligation imposing restriction on use of land;

or of obligation annexed to ownership but not amounting to interest or easement.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by ostensible owner.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by person having authority to revoke former transfer.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to

A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint transfer for consideration.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(*a*) A, owning a moiety, and B and C each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(*b*) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

Transfer by co-owners of share in

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular

common property.

share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bonâ fide* paid to holders defective title.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Improvements made by *bonâ fide* holders under defective titles.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Transfer of property pending suit relating thereto.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Fraudulent transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

"Sale" defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

[1] Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

[1] In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

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[1] As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, *see* s. 1, *supra*. These paragraphs extend to every cantonment in British India—*see* the Cantonments Act, 1889 (XIII of 1889), s. 32(*l*), General Acts, Vol. IV.

Rights and liabilities of buyer and seller.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(*1*) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(*2*) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that intsrest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (*a*) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (*b*) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and in case (*b*) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent

which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

Sale of one of two properties subject to a common charge.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Discharge of Incumbrances on Sale.

Provision by Court for incumbrance and sale free therefrom.

57. (*a*) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of

further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer there of to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

Of Mortgages of Immoveable Property and Charges.

"Mortgage," "mortgagor," "mortgagee," "mortgagor-money" and "mortgage-deed" defined.

58. (*a*) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee ; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Simple mortgage.

(*b*) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees,

expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(*c*) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

Usufructuary mortgage.

(*d*) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

English mortgage.

(*e*) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage when to be by assurance.

[1] **59.** Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may by effected either by [2][a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, [3][Rangoon, Moulmein,

[1] As to limitation to the territorial operation of s. 59, *see* s. 1, *supra*. S. 59 extends to every cantonment in British India—*see* the Cantonments Act, 1889 (XIII of 1889), s. 32 (*1*), General Acts, Vol. IV.

[2] Substituted for "an instrument" by the Transfer of Property Act (Amendment) Act, 1904 (VI of 1904), s. 3, General Acts, Vol. VI.

[3] Substituted for "and Rangoon" by Act VI of 1904, s. 4, *ibid.*

Bassein and Akyab], by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed if any, to the mortgagor, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Right to redeem one of two properties separately mortgaged.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

(*a*) where the mortgagee is authorized to pay himself the mortgage-money

from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money—when the term, if any prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

Accession to mortgaged property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Renewal of mortgaged lease.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property ;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Waste by mortgagor in possession.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate ; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

Right to foreclosure or sale.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a

decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for forcelosure.

Nothing in this section shall be deemed—

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

(*a*) where the mortgagor binds himself to repay the same:

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

(*c*) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do may sue him for the mortgage-money.

Power of sale when valid.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases [1][and in no others], namely:—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist [1][or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette];

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi, [2][Rangoon, Moulmein, Bassein or Akyab].

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and,

[1] These words were inserted by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885) s. 5, *infra*.

[2] Substituted for the words "or Rangoon," by s. 4 of the Transfer of Property (Amendment) Act, 1904 (VI of 1904), General Acts, Vol. VI.

secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections 6 to 19 (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866,[1] shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, [2][or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette]. XXVIII of 1866.

Accession to mortgaged property.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Rights of mortgagee in possession.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and,

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

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[1] General Acts, Vol. I.

[2] These words were inserted by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s. 5 *infra*.

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Charge on proceeds of revenue-sale.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Right of subsequent mortgagee to pay off prior mortgagee.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law[1] for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Rights of mesne mortgagee against prior and subsequent mortgagees.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

[1] *See* the Indian Registration Act, 1908, (XVI of 1908), General Acts, Vol. VI.

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the

earliest time when he could take such amount out of Court, as the case may be.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in lieu of interest.

77. Nothing in section 76, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

Postponement of prior mortgages.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Mortgage to secure uncertain amount when maximum is expressed.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B. & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B. & Co., and C gives notice to B. & Co. of the second mortgage. At the date of the second mortgage, the balance due to B. & Co. does not exceed Rs. 5,000. B. & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B. & Co. are entitled, to the extent of Rs. 10,000 to priority over C.

Tacking abolished.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

Marshalling securities.

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice

of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Contribution to mortgage-debt.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

Deposit in Court.

Power to deposit in Court money due on mortgage.

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law[1] for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of interest.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the

[1] *See* the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I., Order VI, rule 15, General Acts, Vol. VI.

mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

85. [*Parties to suits for foreclosure, sale and redemption.*] *Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),*[1] *s.156 and Sch. V.*

Foreclosure and sale.

[86 *to* **90.]** *Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),*[1] *s. 156 and Sch. V.*

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property :— Who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property ;

(*b*) any person having any interest in or charge upon the right to redeem the property ;

(*c*) any surety for the payment of the mortgage-debt or any part thereof ;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor ;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;

(*g*) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

[92 *to* **94.]** *Repealed by the Code of Civil Procedure, 1908 (Act V of 1908)*[1], *s. 156, and Sch. V.*

95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession. Charge of one of several co-mortgagors who redeems.

[1] General Acts, Vol. VI. *Cf.* Act V of 1908, Sch. I, Order XXXIV.

Sale of property subject to prior Mortgage.

[96 and 97.] *Repealed by the Code of Civil Procedure, 1908 (Act V of 1908).*[1]

Anomalous Mortgages.

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*) and (*e*).

98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99. [*Attachment of mortgaged property*]. *Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),*[2] *s. 156 and Sch. V.*

Charges.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 [3]* * * * * * * * * * * * shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expensesproperly incurred in the execution of his trust.

Extinguishment of charges.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

Service or tender on or to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the

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[1] General Acts, Vol. VI. *Cf.* Act V. of 1908, Sch. I, Order XXXIV, rules 12 and 13.
[2] General Acts, Vol. VI. *Cf.* Act V. of 1908. Sch. I, Order XXXIV, rule 14.
[3] The words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property" were repealed by the Code of Civil Procedure 1908 (Act V of 1908), s. 156, and Sch. V, *ibid.*

mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

Notice, etc., to or by person incompetent to contract.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract[1]; and the provisions of Chapter XXXI of the Code of Civil Procedure[2] shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Power to make rules.

104. The [3]High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

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[1] As to persons competent to contract, *see* ss. 11 and 12 of the Indian Contract Act, 1872 (IX of 1872), General Acts, Vol. II.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXXII, General Acts, Vol. VI.

[3] For rules made by—
(1) the High Court at Bombay, *see* Bombay Government Gazette, 1904, Pt. I, p. 1001;
(2) the Chief Court of Burma, *see* Burma Gazette, 1904, Pt. IV, p. 437.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Lease defined.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Duration of certain leases in absence of written contract or local usage.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Leases how made.

[1] **107.** A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

[2] [All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession:

Provided that the Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification [3] in the

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[1] As to limitation to the territorial operation of s. 107, *see* s. 1, *supra*. S. 107 extends to every cantonment in British India—*see* the Cantonments Act, 1889 (XIII of 1889), s. 32 (*1*), General Acts, Vol. IV.

[2] This paragraph and proviso were substituted for the original by s. 5 of the Transfer of Property (Amendment) Act, 1904 (VI of 1904), General Acts, Vol. VI.

The original paragraph was as follows:—

"All other leases of immoveable property may be made either by an instrument or by oral agreement."

[3] For notification (1) by the Government of Burma, *see* Burma Gazette, 1907, Pt. I, p. 226; (2) by the Government of the United Provinces, *see* United Provinces Gazette, 1905, Pt. I, *p.* 410.

local official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

Rights and liabilities of lessor and lessee.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

(*A*) *Rights and Liabilities of the Lessor.*

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(*b*) the lessor is bound on the lessee's request to put him in possession of the property :

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(*B*) *Rights and Liabilities of the Lessee.*

(*d*) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(*e*) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee

may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(*h*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give

or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of lessor's transferee.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Exclusion of day on which term commences.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

111. A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Waiver of forfeiture.

112. A forfeiture under section 111, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Waiver of notice to quit.

113. A notice given under section 111, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Relief against forfeiture for non-payment of rent.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Effect of surrender and forfeiture on under-leases.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

Effect of holding over.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an

agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations.

(*a*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

Exemption of leases for agricultural purposes.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may by notification published in the local official Gazette declare all or any of such provisions to be so applicable [1][in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

"Exchange" defined.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Right of party deprived of thing received in exchange.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Rights and liabilities of parties.

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

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[1] These words were inserted by s. 6 of the Transfer of Property (Amendment) Act, 1904 (V of 1904), General Acts, Vol. VI.

CHAPTER VII.

OF GIFTS.

"Gift" defined.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

Transfer how effected.

[1] **123.** For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

Gift to several, of whom one does not accept.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

When gift may be suspended or revoked.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

[1] As to limitation to the territorial operation of s. 123, *see* s. 1, *supra*. S. 123 extends to every cantonment in British India—*see* the Cantonments Act, 1889 (XIII of 1889), s. 32 (*l*), General Acts, Vol. IV.

Onerous gifts.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(*a*) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal donee.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Saving of donations *mortis causa* and Muhammadan law.

129. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 123, any rule of Hindu or Buddhist law.

CHAPTER VIII.[1]

OF TRANSFERS OF ACTIONABLE CLAIMS.

Transfer of actionable claim.

130. (*1*) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :

[1] This Chapter was substituted for the original Chapter VIII by the Transfer of Property Act, 1900 (II of 1900), General Acts, Vol. V.

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(*2*) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (*1*) of section 130 and to the provisions of section 132.

Notice to be in writing, signed.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of transferee of actionable claim.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Warranty of Solvency of debtor.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Mortgaged debt.

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery: secondly, in or towards satisfaction of the amount for the time being secured

by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Assignment of rights under marine or fire policy of insurance.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Incapacity of officers connected with Courts of Justice.

136. No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim, so dealt with by him as aforesaid.

Saving of negotiable instruments, etc.

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE.

Year and chapter.	Subject.	Extent of repeal.
	(*a*) STATUTES.	
27 Hen. VIII, c. 10.	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances	The whole.
27 Eliz., c. 4	Fraudulent conveyances	The whole.
4 Wm. and Mary, c. 16.	Clandestine mortgages	The whole.

(*b*) ACTS.

THE SCHEDULE—*contd.*

Number and year.	Subject.	Extent of repeal.
	(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.	
IX of 1842	Lease and release	The whole.
XXXI of 1854 . .	Modes of conveying land . . .	Section 17.
XI of 1855 . . .	Mesne profits and improvements . .	Section 1; in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profits and."
XXVII of 1866 . .	Indian Trustee Act	Section 31.
IV of 1872 . . .	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 . . .	Central Provinces Laws Act . . .	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876 .	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877 . . .	Specific Relief	In sections 35 and 36, the words "in writing".
	(*c*) REGULATIONS.	
Bengal Regulation I of 1798.	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; Interest; Mortgagees in possession.	Section 15.

THE INDIAN COMPANIES ACT, 1882.

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ACT No VI OF 1882.[1]

[*24th February 1882.*]

An Act for the incorporation, regulation and winding-up of Trading Companies and other Associations.

Preamble. WHEREAS it is expedient to amend the law relating to the incorporation, regulation and winding-up of Trading Companies and other Associations; It is hereby enacted as follows :—

PRELIMINARY.

Short title. **1.** This Act may be cited as the Indian Companies Act, 1882.

Local extent. It extends to the whole of British India :

Commencement. It shall come into force on the first day of May 1882 : and the time at which it comes into force is hereinafter referred to as the commencement of this Act.

Repeal of Act X of 1866. **2.** On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect— X of 1866.

(*a*) the incorporation of any Company registered under the said Act or any Act thereby repealed ;

(*b*) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed ; .

(*c*) table B[2] in the schedule annexed to Act No. XIX of 1857[3] or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

And all references to the said Indian Companies Act, 1866,[4] in Acts or Regulations passed before the commencement of this Act shall be read X of 1866.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 1275; for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 932 and 1100, and *ibid*, 1882, Supplement, p. 203.

Act VI of 1882 was declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, *see* now s. 4 [1] of the Burma Laws Act, 1898 (XIII of 1898), by which Act XX of 1886 has been repealed.

It has been extended, under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to British Baluchistan, *see* Gazette of India, 1895, Pt. II, p. 9.

The provisions of the Act do not apply to Societies registered under the Co-operative Credit Societies Act, 1904 (X of 1904), *see* s. 28, Act X of 1904, General Acts, Vol. VI.

Ss. 3 to 10 of the Indian Companies (Memorandum of Association) Act, 1895, are to be read with, and taken as part of, this Act, General Acts, Vol. IV. The Indian Companies (Branch Registers) Act, 1900 (IV of 1900), is to be construed as one with this Act, *see* General Acts, Vol. V.

The Act is to a great extent a re-enactment of the Indian Companies Act, 1866 (X of 1866). That Act was based chiefly on the Companies Act, 1862 (25 & 26 Vict., c. 89).

[2] Printed *infra*, Appendix I.

[3] Act XIX of 1857 was repealed by Act X of 1866, s. 219.

[4] Act X of 1866 was repealed by s. 2 of this Act.

as if made to this Act; and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Insurance Company" means a Company that carries on the business of insurance either solely or in common with any other business or businesses;

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;

"District Court" means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

Prohibition of partnerships exceeding certain number.

4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts, relating to the following subject-matters:—

The first Part—to the constitution and incorporation of Companies and Associations under this Act;

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act;

The third Part—to the management and administration of Companies and Associations under this Act;

The fourth Part—to the winding-up of Companies and Associations under this Act;

The fifth Part—to the registration-office;

The sixth Part—to the application of this Act to Companies registered under Act No. XIX of 1857[1] (*for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof*), and Act No. VII of 1860[1] (*to enable Joint-Stock Banking Companies to be formed on the principle of limited liability*), or either of them;

The seventh Part—to Companies authorized to register under this Act;

The eighth Part—to the application of this Act to unregistered Companies;

The ninth Part—to miscellaneous provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of forming Company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

Explanation.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Mode of limiting liability of members.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Directors with unlimited liability.

[2] Where a Company is formed as a Limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited

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[1] Act XIX of 1857 and Act VII of 1860 were repealed by Act X of 1866, s. 219. Table B in the Schedule to Act XIX of 1857, however, remains in force (*see* s. 2, *supra*), and is printed *infra*, Appendix I.

[2] *Cf.* s. 4 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

Memorandum of association of a Company limited by shares.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company with the addition of the word "limited" as the last word in such name ;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate ;

(*c*) the objects for which the proposed Company is to be established ;

(*d*) a declaration that the liability of the members is limited ;

(*e*) the amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount ;

Subject to the following regulations :—

(*f*) that no subscriber shall take less than one share

(*g*) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a Company limited by guarantee.

9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company, with the addition of the word "limited" as the last word in such name ;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate ;

(*c*) the objects for which the proposed Company is to be established ;

(*d*) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited

of an unlimited Company.

Company), the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company ;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate ;

(*c*) the objects for which the proposed Company is to be established.

Signature and effect of memorandum of association.

11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

Reduction of Capital and Shares.[1]

Power to Company to reduce capital.

13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital ; but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-Stock Companies, as is hereinafter mentioned.

[2]*Explanation I.*—The word " capital " includes paid-up capital.

Explanation II.—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company ; and paid-up capital may be reduced either with or without

[1] *Cf.* ss. 9 to 19 of the Companies Act, 1867 (30 & 31 Vict., c. 131).
[2] *Cf.* s. 3 of the Companies Act, 1877 (40 & 41 Vict., c. 26).

extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Company to add "and reduced" to its name for a limited period.

14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to apply to the Court for an order confirming reduction.

15. A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

[1] When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced," as mentioned in section 14.

[1] In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

Creditors may object to reduction and list of objecting creditors to be settled by Court.

16. Where a Company proposes to reduce its capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

[1] *Cf.* s. 4 of the Companies Act, 1877 (40 & 41 Vict., c. 26).

The Court shall settle a list of such creditors, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction :

[1] Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

Court may dispense with consent of creditor on security being given for his debt.

17. When a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say) :—

(*a*) if the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated ;

(*b*) if the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

18. The Registrar of Joint-Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company, as altered by the order, the amount of such capital, the number of shares in which it is to

[1] *Cf.* s. 4 of the Companies Act, 1877 (40 & 41 Vict., c. 26).

be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,[1] shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with and that the capital of the Company is such as is stated in the minute.

Minute to form part of memorandum of association.

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration; and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

[1] *Cf.* s. 4 of the Companies Act, 1877 (40 & 41 Vict., c. 26).

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Registered minute to be embodied in memorandum of association.

21. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty on concealment of name of creditor.

22. If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code,[1] any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both. XLV of 1860.

Power to reduce capital by cancellation of unissued shares.

[2]**23.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations, as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

Sub-division of Shares.[3]

Shares may be divided into shares of smaller amount.

24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association:

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the

[1] General Acts, Vol. I.
[2] *Cf.* s. 5 of the Companies Act, 1877 (40 & 41 Vict., c. 26).
[3] *Cf.* ss. 21 and 22 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.[1]

Special provisions as to associations formed for purposes not of gain.

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license[2], under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered.

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.[3]

Company may have some shares

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed or as

[1] *Cf.* s. 23 of the Companies Act, 1867 (30 & 31 Vict., c. 131).
[2] For instance of such direction, see Mad. R. and O.
[3] *Cf* ss. 24 and 25 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

fully paid, and others no.

altered by special resolution, from doing any one or more of the following things, namely :—

(*a*) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls;

(*b*) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made;

(*c*) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares.

Transfer of Shares [1].

Transfer may be registered at request of transferor.

29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share-warrants to Bearer.[2]

Warrant of limited shares fully paid up may be issued in name of bearer.

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Coupons.

Effect of share-warrant.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share-warrant.

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[1] *Cf.* s. 26 of the Companies Act, 1867 (30 & 31 Vict., c. 131).
[2] *Cf.* ss. 27 to 31 and 32 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

Re-registration of bearer of a share-warrant in the register.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of the share-warrant a member.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in register where share-warrant issued.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:—

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(*c*) the date of the issue of the warrant.

[1]35. [*Stamps on share-warrants. Penalty for issuing share-warrant not duly stamped.*] *Rep. Indian Stamp Act, 1899 (II of 1899).*

Change of Name.

Power of Companies to change name.

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the

[1] *See* now Art. 59, Sch. I, and s. 62 (2) of the Indian Stamp Act, 1899 (II of 1899), General Acts, Vol. V.

Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Explanation.—The issue of the certificate of incorporation is necessary to complete the change of name.

Regulations to be prescribed by articles of association.

Articles of Association.

37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Signature and effect of articles of association.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors

and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

General Provisions [1].

Registration of memorandum of association and articles of association with fees as in tables B and C.

40. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

Effect of registration.

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited : the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

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[1] For notification fixing the fee for the registration of an association which is not for profit as a Company under s. 26 see Gazette of India, 1913, Pt. I. p. 341.

[2] As to persons competent to contract, *see* s. 11 of the Indian Contract Act, 1872 (IX of 1872), General Acts, Vol. II.

(*Part I.—Constitution and Incorporation of Companies and Associations under this Act. Part II.—Distribution of Capital and Liability of Members of Companies and Associations under this Act.*)

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Copies of memorandum and articles to be given to members.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall for each such offence incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies.

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of interest in Company.

44. The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner

provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Definition of "member."

45. The subscribers of the memorandum of asssociation of any Company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreeed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of th Company.

Transfer by personal representative.

46. Any transfer of the share or other interest of a deceased member of the Company under this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

47. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars :—

(*a*) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of any person was entered in the register as a member;

(*c*) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

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[1] These particulars as to keeping registers apply also to branch registers, *see* s. 3 (*3*) of the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), General Acts, Vol. V.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Annual list of members.

48. Every Company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars :—

(*a*) the amount of the capital of the Company and the number of shares into which it is divided ;

(*b*) the number of shares taken from the commencement of the Company up to the date of the summary ;

(*c*) the amount of calls made on each share ;

(*d*) the total amount of calls received ;

(*e*) the total amount of calls unpaid ;

(*f*) the total amount of shares forfeited ;

(*g*) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section ; and a copy shall forthwith be forwarded to the Registrar of Joint-Stock Companies.

Particulars to be contained in annual summary.

[1] **49.** After the issue by the Company of a share-warrant, the annual summary required by section 48 shall contain the following particulars (namely) :—the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made and the number of shares or amount of stock comprised in each warrant.

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[1] *Cf.* s. 32 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

(*Part II.—Distribution of Capital and Liability of Members of Companies and Associations under this Act.*)

Penalty on Company, etc., not keeping a proper register.

50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division or conversion, give notice to the Registrar of Joint-Stock Companies of the same, specifying the shares so consolidated, divided or converted.

Effect of conversion of shares into stock.

52. Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of trusts on register.

53. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Certificate of shares or stock

54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

[1] **55.** The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection.

[1] The provisions of this section and of s. 60 apply to duplicate registers, *see* s. 3 (*4*) of the Indian Companies (Branch Registers) Act., 1900 (IV of 1900), General Acts, Vol. V.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

In addition to the above penalty any Judge of a High Court may, by order, compel an immediate inspection of the register.

Power to close register.

56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and, where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of

the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application and any damages the party aggrieved may have sustained.

The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure [1] shall lie.

Notice to Registrar of rectification of register.

59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

[2] **60.** The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Liability of Members.

Liability of present and past members of Company.

61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

(*a*) no past member shall be liable to contribute to the assets of the

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.
[2] *See* footnote to s. 55, *supra*.

Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(*b*) no past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:

(*c*) no past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*d*) in the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(*e*) in the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(*f*) nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:

(*g*) no sum due to any member of a Company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Explanation I.—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

Explanation II.—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Liability of director

[1] 62. With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose

[1] *Cf.* s. 5 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

liability is unlimited, the following modifications shall be made in the last preceding section :— whose liability is unlimited.

(*a*) subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company :

(*b*) no contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(*c*) no contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(*d*) subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

63. Every Company under this Act shall have a [registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on. Registered office of Company.

Notice of situation of registered office.

64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication of name by a limited Company.

65. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters [1][in the English language] in all notices, advertisements and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Penalties on non-publication of name.

66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, or manager, or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company, any bill of exchange, hundi, promissory note, endorsement, cheque[2] [or] order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is

[1] These words were substituted for the words "in such language or languages" by s. 11 of the Indian Companies (Memorandum of Association) Act, 1895 (XII of 1895), General Acts, Vol. IV.

[2] The word "or" was inserted by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

Contracts.

Contracts how made.

[1] **67.** Contracts on behalf of any Company under this Act may be made as follows (that is to say) :—

(*a*) any contract, which if made between private persons would be by law required to be in writing, and if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company ; and such contract may be in the same manner varied or discharged :

(*b*) any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company ; and such contract may, in the same manner be varied or discharged :

(*c*) any contract, which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company ; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Register of mortgages.

68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the

[1] *Cf.* s. 37 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register.

Explanation.—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

Certain Companies to publish statement entered in schedule.

69. Every limited banking Company, and every insurance Company, and deposit, provident or benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

List of directors to be sent to Registrar.

70. Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

(Part III.—Management and Administration of Companies and Associations under this Act.)

Penalty on Company not keeping register of directors.

71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Promissory notes, bills of exchange and hundis.

72. A promissory note, bill of exchange or hundi shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Prohibition against carrying on business with less than seven members.

73. If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Provisions for Protection of Members.

General meeting of Company.

74. A general meeting of every Company under this Act shall be held once at the least in every year.

Balance-sheet.

A balance-sheet shall be made out and filed with the Registrar of Joint-Stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit.

Audit.

And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified,

and it has been laid before and adopted by the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

Meetings.

Company to hold meeting within six months after registration.

[1]**75.** Every Company formed under this Act, after the commencement of this Act, shall hold a general meeting, within six months after its memorandum of association is registered; and, if such meeting is not held, the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty.

Power to alter regulations by special resolution.

76. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866,[2] may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company. X of 1866.

[3] Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Power to make liability of director s unlimited.

Any limited Company formed under this Act or the Indian Companies Act, 1866,[2] may by a special resolution, if authorized to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or X of 1866.

[1] *Cf.* s. 39 of the Companies Act, 1867 (30 & 31 Vict., c. 131).
[2] Act X of 1866 was repealed by s. 2 of this Act.
[3] *Cf.* s. 8 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

Definition "special resolution."

77. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision where no regulations as to meetings.

78. In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registration of special resolutions.

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-Stock Companies and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding

twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Copies of special resolutions to be embodied in articles of association.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section or section 76, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Execution of deeds abroad.

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company.

Examination of affairs of Company by inspectors.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

(*a*) in the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(*b*) in the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application for inspection to be supported by evidence.

83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Result of examination how dealt with.

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

Power of Company to appoint inspectors.

86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of inspectors to be evidence.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the

opinion of the inspectors in relation to any matter contained in such report.

Prospectus, etc., to specify dates and names of parties to certain prior contracts.

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-Stock Company, shall specify the dates [1][of] and the names of the parties to any agreement enforceable by law which has been entered into by the Company, or the promoters, directors or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors of the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

Notices.

Service of notices on Company.

289. Any summons, notice, order or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of Joint-Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Rules as to notices by letter.

90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Authentication of notices by Company.

91. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any director, secretary or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Evidence of proceedings at meetings.

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors

[1] The word "of" was inserted by the Repealing and Amending Act, 1891 (XII of 1891). General Acts, Vol. IV.

[2] *Cf.* s. 38 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Explanation.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Provision as to costs in suits brought by certain limited Companies

93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaint in suits against members.

94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member it shall be sufficient to allege that the defendant is a member of the Company and is indebted to the Company in respect of a call made or other moneys due whereby a suit has accrued to the Company.

Alteration of Forms.

Forms to be used.

95. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor General in Council may alter form.

The Governor General in Council may, from time to time, make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Any such table or form, when altered, shall be published in the Gazette of India, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

Arbitrations.[1]

Powers for Companies to refer matters to arbitration.

96. Any Company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Power to alter or revoke agreements for reference.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect

98. Every reference or agreement in accordance with this Act, except so far as it is, from time to time, revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to arbitrator.

99. Where the Companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

Appointment of arbitrators by Companies.

101. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appointment of

102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being there-

[1] *Cf.* the Arbitration (Railway) Act, 1859 (22 & 23 Vict., c. 59).

unto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing. arbitrators by Local Government.

103. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place. Appointment of arbitrators by Companies to supply vacancies.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator. Appointment of arbitrators by Local Government to supply vacancies.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal. Appointment of arbitrators not revocable.

106. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire. Appointment of umpire by arbitrators.

107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators. Appointment of umpire by Local Government.

108. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place. Appointment of umpire by arbitrators to supply vacancy.

109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to Appointment of umpire by

Local Government to supply vacancy.

act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors.

110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Reference to umpire.

111. Where there are two or more arbitrators, if they do not within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, etc., to call for books, etc., and examine witnesses on oath.

112. The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Procedure in the arbitration.

113. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of Companies.

114. The arbitrator, and the arbitrators and the umpire, respectively, may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

Several awards may be made.

115. The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in

116. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to

be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

due time to bind all parties.

117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Power for umpire to extend period for making his award.

118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards not to be set aside for informality.

119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Awards to be obeyed.

120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Agreements, arbitrations and awards to have effect.

121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire, respectively.

Costs of arbitration and award.

122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Payment of costs.

123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the [1] Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Submission to arbitration to be filed in Court.

[1] *See* now Act V of 1908, General Acts, Vol. VI.

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of "contributory."

124. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory.

125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras and Bombay.

Contributories in case of death.

126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to [1][proof] against the estate of such insolvent, or otherwise to allow, to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

Winding-up by Court.

Circumstances under which Company may be wound up by Court.

128. A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say) :—

(*a*) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court;

[1] "Proof" was substituted for "prove" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

(*b*) whenever the Company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year;

(*c*) whenever the members are reduced in number to less than seven;

(*d*) whenever the Company is unable to pay its debts;

(*e*) whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed unable to pay its debts.

129. A Company under this Act shall be deemed to be unable to pay its debts—

(*a*) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

(*b*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;

(*c*) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

Definition of "the Court."

130. The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations for the management of the Company it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

Definition of "debts".

The expression "debts" as used in this Part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a life-assurance Company), the expression "debts", as so used, includes also

contingent or prospective liability under policies and annuity and other existing contracts.

Application for winding-up to be made by petition.

[1]**131.** Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

The petition must allege facts which, if proved, will justify an order for winding-up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *primâ facie* case is also established to the satisfaction of the Judge; and where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

Explanation.—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other moneys due.

Contributory when not qualified to present winding-up petition.

132. No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

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[1] *Cf.* s. 21 of the Life-Assurance Companies Act, 1870 (33 & 34 Vict., c. 61).
[2] *Cf.* s. 40 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Commencement of winding-up by Court.

133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction.

134. The Court may, at any time after the presentation of the petition for winding-up a Company under this Act, and before making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be pursued by Court on hearing petition.

135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be stayed after order for winding-up.

136. When an order has been made for winding-up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar.

137. When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the Company.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

Power of Court to stay proceedings.

138. Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share-capital

139. When an order has been made for winding-up a Company limited by guarantee and having a capital divided into shares, any share-capital that

of Company limited by guarantee.

may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories.

140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Official Liquidators.

Appointment of official liquidator.

141. For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein, there may be appointed a person or persons, to be called an official liquidator or official liquidators.

The Court may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations, removals, filling up vacancies and compensation.

142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and duties of official liquidator.

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

Powers of official liquidator.

144. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company ;

(*b*) to carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same ;

(*c*) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels ;

(*d*) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal ;

(*e*) to prove, rank, claim and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors ;

(*f*) to draw, accept, make and endorse any bill of exchange, hundí or promissory note in the name and on behalf of the Company ; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money ; and the drawing, accepting, making or endorsing of every such bill, hundí or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill, [1][hundí] or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof ;

[1] The word "hundí" was inserted by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

(*g*) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself: Provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively;

(*h*) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

Discretion of official liquidator.

145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Appointment of attorney or vakil to official liquidator.

146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Ordinary Powers of Court.

Collection and application of assets.

147. As soon as may be after making an order for winding-up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Provision as to representative contributories.

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to the debts of, others.

Power of Court to re-

149. The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of

contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled. quire delivery of property.

150. The Court may, at any time after making an order for winding-up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part of this Act. Power of Court to order payment of debts by contributory.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits:

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

151. The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves. Power of Court to make calls.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into Bank.

152. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

153. All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Provision in case of representative contributory not paying moneys ordered.

154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the moneys due.

Order conclusive evidence.

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories.

157. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order costs.

158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred in winding-up any Company in such order of priority as the Court thinks just.

Dissolution of Company.

159. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Registrar to

160. Any order so made shall be reported by the official liquidator to the

Registrar, who shall make a minute accordingly in his books of the dissolution of such Company. make minute of dissolution of Company.

161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default. Penalty for not reporting dissolution of Company.

Extraordinary powers of Court.

162. The Court may, after it has made an order for winding-up the Company, summon before it any officer of the Company, or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the Company. Power of Court to summon persons before it suspected of having property of Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same. Examination of parties by Court.

164. The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order. Power to arrest contributory about to abscond or to remove or conceal any of his property.

Power of Court cumulative.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Enforcement of, and Appeal from, Orders.

Power to enforce orders.

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order made in any Court to be enforced by other Courts.

167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with orders to be enforced by other Courts.

168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Appeals from orders.

169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure[1] unless such time is extended by the Court of Appeal.

Judicial notice to be taken of signature of officers.

170. In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take

[1] *See* now Act V of 1908, General Acts, Vol. I.

judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

Special Commissioners for receiving evidence.

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Affidavits, etc., may be sworn in British India Great Britain or Ireland, or abroad, before any competent Court or person.

172. If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to an such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

Voluntary Winding-up of Company.

Circumstances under

173. A Company under this Act may be wound up voluntarily—

(*a*) whenever the period, if any, fixed for the duration of the Company

which Company may be wound up voluntarily.

by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;

(*b*) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily;

(*c*) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding-up.

174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution.

Effect of voluntary winding-up on status of Company.

175. Whenever a Company is wound up voluntarily the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

Notice of resolution to wind-up voluntarily.

176. Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company:—

(*a*) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of

the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company:

(*b*) liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets:

(*c*) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators and may fix the remuneration to be paid to them:

(*d*) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(*e*) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers:

(*f*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:

(*g*) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators:

(*h*) the liquidators may exercise the powers hereibefore giv en to the Court of settling the list of contributories of the Company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

(*i*) the liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(*j*) the liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up

178. Where a Company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have

on share-capital of Company limited by gurantee.

been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators.

179. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors.

180. Any arrangement which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

181. Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of

the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill up vacancy in office of liquidators.

184. If any vacancy occurs in the office of liquidators appointed by the Company, by death resignation or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling-up such vacancy may be confiened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators.

185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding-up to make up an account.

186. As soon as the affairs of the Company are fully wound-up the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of: and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

The meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 276.

Liquidators to report meeting to Registrar.

187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Costs of voluntary liquidation.

188. All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Winding-up subject to the supervision of the Court.

Power of Court, on application, to direct winding-up subject to supervision.

191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Petition for winding-up subject to supervision.

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court.

Court may have regard to wishes of creditors.

193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory, by the regulations of the Company.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

194. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up subject to supervision.

195. Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the surpervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

Supplemental Provisions.

Disposition after commencement of winding-up avoided.

197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

Books of Company to be evidence.

198. Where any Company is being wound up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts and documents of Company.

199. Where any Company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the Company and of the liquidator may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

200. Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Priority of debts.

[1]**200A.** (*1*) In the distribution of the assets of any Company being wound up under this Act, there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to Her Majesty or to a local authority, due from the Company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary of any clerk or servant in respect of services rendered to the Company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the commencement of the winding-up.

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[1]S. 200A was inserted by the Indian Companies Act (1882) Amendment Act, 1887 (VI of 1887), General Acts, Vol. IV.

(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

(3) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the Company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator.

General scheme of liquidation may be sanctioned.

201. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

Power to compromise.

202. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company, or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise.

[1]203. Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing

[1] Cf. s. 2 of the Life-Assurance Companies Act, 1870 (33 & 34 Vict., c. 61).

three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

Power for liquidators to accept shares, etc., as a consideration for sale of property of Company.

204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other Company for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say):—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but,

if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Appointment of arbitrator when questions are to be determined by arbitration.

206. When any dispute so directed to be settled by arbitration has arisen, then unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire.

208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire, on the matters so referred to him, shall be final.

Power of arbitrators to call for books, etc.

209. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Costs to be in discretion of arbitrators.

210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Submission to arbitration may be filed in Court.

211. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure [1] shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Certain attachments, distresses and executions to be void.

212. Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void.

Nothing in this section applies to proceedings by the Government.

Fraudulent preference.

213. Every conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, which would, if made or done by or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section the making of an application for winding up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees for the benefit of all its creditors, shall be void.

Power of Court to assess damages against delinquent

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the Company,

[1] *See* now Act V of 1908, General Acts, Vol. VI.

or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court thinks just. directors and officers.

Explanation I.—The banker of a Company is not, as such, an officer within the meaning of this section.

Explanation II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

215. If any director, officer or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies or fraudulently secretes any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees. Penalty on falsification of books.

216. Where any order is made for winding-up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company. Prosecution of delinquent directors in case of winding-up by Court.

[1]**217.** If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine. Penalty for false evidence.

[1] *Cf.* s. 193 of the Indian Penal Code (Act XLV of 1860), General Acts, Vol. I.

Winding-up may be referred to District Court.

[1]**218.** Where the High Court makes an order for winding-up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Transfer of winding up from one District Court to another.

[1]**219.** If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

PART V.

REGISTRATION-OFFICE.

Constitution of registration-office.

220. The registration of Companies under this Act shall be conducted as follows (that is to say):—

(*a*) The Local Government may, after the sanction of the Governor General in Council to the creation of any such offices shall have been obtained, from time to time appoint[2] such Registrars, Assistant Registrars, clerks and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure:

(*b*) The Local Government may make such regulations[3] as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid:

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[1] *Cf.* ss. 41 and 42 of the Companies Act, 1867 (30 & 31 Vict., c. 131), respectively.

[2] For appointments made under the power conferred by this section in—
(*1*) Assam, *see* Assam List of Local Rules and Orders, Ed. 1893, p. 81;
(*2*) Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Pt. I, p. 1143;
(*3*) Bombay, *see* Bombay Government Gazette, 1897, Pt. I, p. 1803;
(*4*) Coorg, *see* Coorg Gazette, 1904, Pt. I, p. 30;
(*5*) United Provinces of Agra and Oudh, *see* U. P. R. and O.;
(*6*) Burma, *see* Bur. R. M.; Burma Gazette, 1907, Pt. I, p. 24;
(*7*) N.-W. F. Province, *see* Gazette of India, 1901, Pt. II, p. 1304;
(*8*) Madras, *see* Mad. R. and O.

[3] For regulations under this section in—
(*1*) Assam, *see* Assam Local Rules and Orders, Ed. 1893, p. 181;
(*2*) Bengal, *see* Ben. R. and O.;
(*3*) Bombay, *see* Bom. R and O.;
(*4*) Burma, *see* Bur. R M.; Burma Gazette, 1907, Pt. I, p. 133;
(*5*) Central Provinces, *see* C. P. R. and O.;
(*6*) Madras, *see* Mad. R. and O.;
(*7*) Punjab, *see* Punjab Gazette, 1883, Pt. I, p. 489;
(*8*) United Provinces, *see* U. P. R. and O.

(*c*) The Local Government may from time to time determine the places[1] at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established:

(*d*) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies:

(*e*) Every person may inspect the documents kept by the Registrar of Joint-Stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct,[2] not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract:

(*f*) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of Joint-Stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them; but they shall, in the execution of their duties, conform to any regulations that may be issued by the Local Government:

(*g*) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of Joint-Stock Companies such salaries as the Local Government may, with the sanction of the Governor General in Council, direct:

(*h*) Whenever any act is herein directed to be done to or by the Registrar of Joint-Stock Companies, such act shall, until the

[1] For instances of notification issued under this clause and clause (*a*), *see* Mad. R. and O. and U. P. R. and O.

[2] For notification declaring in the case of Burma that the fees to be levied under this clause shall be the maximum fees allowed by this section, *see* Bur. R. M.; Burma Gazette, 1907, Pt. I, p. 136.

Local Government otherwise directs, be done to or by the existing Registrar of Joint-Stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS.

Application of Act to Companies forme under Act XIX of 1857 or VII of 1860.

221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX of 1857[1] and Act No. VII of 1860[1], or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B[2] annexed to Act No. XIX of 1857, and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Application of Act to Companies registered under Act XIX of 1857

222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly

[1] Act XIX of 1857 and Act VII of 1860 were repealed by Act X of 1866, s. 219.
[2] Table B in the Schedule to Act XIX of 1857, however, remains in force (*see* s. 2, *supra*) and is printed *infra*, Appendix I.

to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them. or VII of 1860.

223. Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct. Mode of transferring shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

224. With the exceptions made in the next following section, and subject to the regulations therein contained, every Company, existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up. Companies capable of being registered.

225. The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say) :— Regulation as to registration of existing Companies.

(*a*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, and not being a Joint-Stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof :

(*b*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company or as a Company limited by guarantee :

(*c*) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-Stock Company as hereinafter defined, shall in pursuance of this Part

of this Act register under this Act as a Company limited by shares:

(*d*) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by majority of such of its members as may be present personally, or by a proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:

(*e*) Where a Company, not having the liability of its members limited by Act of Parliament, or Act of the Governor General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy, at such last-mentioned general meeting:

(*f*) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Definition of "Joint-Stock Company."

226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-Stock Company shall be deemed to be a Company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Requisitions for registration by Companies.

227. Previously to the registration, in pursuance of this Part of this Act, of any Joint-Stock Company, there shall be delivered to the Registrar the following documents (that is to say) :—

(*a*) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number :

(*b*) A copy of any Act of Parliament or Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company :

(*c*) If any such Joint-Stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say) :—

the nominal capital of the Company and the number of shares into which it is divided ;

the number of shares taken and the amount paid on each share ;

the name of the Company, with the addition of the word "limited" as the last word thereof ;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing Company not being a Joint-Stock Company.

228. Previously to the registration in pursuance of this Part of this Act of any Company not being a Joint-Stock Company, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Power for existing Company to register amount of

229. Where a Joint-Stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of

stock instead of shares.

stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing Companies.

230. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Registrar may require evidence as to nature of Company.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a Joint-Stock Company as hereinbefore defined.

On registration of banking Company with limited liability, notice to be given to customers.

232. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain Companies from payment of fees.

233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General in Council, or by Letters Patent.

Company to change name.

234. Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Certificate of registration

235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any,

as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and in the case of a limited Company that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal. of existing Companies.

236. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act. Certificate to be evidence of compliance with Act.

237. All such property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.. Transfer of property to Company.

238. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such Company previously to such registration. Registration under this Act not to affect obligations incurred previously to registration.

239. All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company or the public officer or any member thereof may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company. Continuation of existing suits.

240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company, including. in the case of a Co npany registered as a Co npany li nited by guarantee, the resolution declaring the amount of the guarantee, shall be Effec of registration under Act.

deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association ; and all the provisions of this Act shall apply to such Company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say) :—

(*a*) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof :

(*b*) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-Stock Company whose shares are not numbered :

(*c*) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor General in Council relating to the Company :

(*d*) That no Company shall have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the Company :

(*e*) In the event of the Company being wound up, every person shall be a contributory in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :

(*f*) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or

regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act.

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company.

Power of Court to restrain further proceedings.

241. The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding-up Company.

242. Where an order has been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

PART VIII.

Application of Act to Unregistered Companies.

Winding-up unregistered Companies.

243. Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor General in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions :—

(1) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business

is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such Company, be deemed to be the registered office of the Company:

(2) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court:

(3) The circumstances under which an unregistered Company may be wound up are as follows (that is to say):—

(*a*) whenever the Company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs;

(*b*) whenever the Company is unable to pay its debts;

(*c*) whenever the Court is of opinion that it is just and equitable that the Company should be wound up:

(4) An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the Secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor:

(*b*) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some

director, manager or principal officer of the Company or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same:

(*c*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied:

(*d*) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

Who to be deemed a contributory in the event of Company being wound up.

244. In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

Power of Court to restrain further proceedings.

245. The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of order for

246. Where an order has been made for winding-up an unregistered Company, in addition to the provisions hereinbefore contained in the case of

winding-up Company.

Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Provision in case of unregistered Company.

247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights in, to and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Provisions of this Part of Act cumulative.

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

Miscellaneous Provisions.

Company not to buy its own shares.

249. No Company under this Act shall have power to buy its own shares.

Saving of existing proceedings for winding-up.

250. Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies Act, 1866,[1] or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed; and, for the purposes of such winding-up, the Indian Companies Act, 1866,[1] shall be deemed to remain in full force.

X of 1866.

Saving of conveyances.

251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies Act, 1866,[1] such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866,[1] shall be deemed to remain in full force.

Cognizance of offences.

252. All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force [2] in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Punishment of offences committed within Presidency-towns.

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

Power to make orders as to costs.

[3] **253.** Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of High Court to make rules.

[3] **254.** The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure,[4] concerning the mode of proceedings to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a Company.[5]

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[1] Act X of 1866 was repealed by s. 2 of this Act.

[2] *See* s. 32 of the Code of Criminal Procedure, 1898 (V of 1898), General Acts, Vol. V.

[3] *Cf.* ss. 45 and 20 respectively of the Companies Act, 1867 (30 & 31 Vict., c. 131).

[4] *See* now Act V of 1908, General Acts, Vol. VI.

[5] For rules made by the High Court, Calcutta, under this section, *see* Calcutta Gazette, 1993, Pt. I, p. 997, and Assam Gazette, 1903, Pt. IIA, p. 534.
For rules made by the Chief Court, Punjab, *see* Punjab R. and O.

Construction of "Registrar of Joint-Stock Companies" in Act XXI of 1860.

255. In sections 1 and 18 of Act No. XXI of 1860 [1] (*for the registration of Literary, Scientific and Charitable Societies*), the words "Registrar of Joint-Stock Companies" shall be construed to mean Registrar of Joint-Stock Companies under this Act or any Act for the time being in force.

Act not to apply to Bank of Bengal, Madras or Bombay.

256. Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent per annum from the day appointed for the payment thereof to the time of the actual payment.

[1] General Acts, Vol. I.

(First Schedule.—Table A : Regulations for Management of a Company limited by Shares.)

(7) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9) Shares in the Company shall be transferred in the following form :—

I, *A B*, of , in consideration of the sum of rupees paid to me by *C D* of , do hereby transfer to the said *C D* the share (or shares) numbered standing in my name in the books of the Company, to hold unto the said *C D*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said *C D*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands the day of

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself,

elect to have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient

evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23) The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of the consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which

the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine.

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting.

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in

such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say :—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be

deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48) Votes may be given either personally or by proxy.

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51) Any instrument appointing a proxy shall be in the following form :—

Company Limited.

I, , of , being a member of the Company, Limited, and entitled to vote or votes, hereby appoint

., of , as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held in the year).

As witness my hand, this day of
Signed by the said in the presence of

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions :—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director ; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Rotation of Directors.

(58) At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place ; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so

appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office ; but, if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present ; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned ; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77) No dividend shall bear interest as against the Company.

Accounts.

(78) The directors shall cause true accounts to be kept—
of the stock in trade of the Company ;
of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and
of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meetings, shall be open to the inspection of the members during the hours of business.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure

which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the Company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Balance-sheet.

(First Schedule.—Table A: Balance-sheet.

Dr. *Balance-sheet*[a] *of the* *Company made up to* 18 *Cr.*

		Capital and Liabilities.	Rs.	As.			Property and Assets.	Rs.	As.
I. Capital.		Showing—			III. Property held by the Company.		Showing—		
	1	The number of shares				7	Immoveable property—distinguishing—		
	2	The amount paid per share					(*a*) Freehold land		
	3	If any arrears of calls, the nature of the arrear and the names of the defaulters					(*b*) „ buildings		
							(*c*) Leasehold		
	4	The particulars of any forfeited shares				8	Moveable property—distinguishing—		
							(*d*) Stock-in-trade		
II. Debts and Liabilities of the Company.		Showing—					(*e*) Plant		
	5	The amount of loans or mortgages or debenture bonds					The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss.		
	6	The amount of debts owing by the Company—distinguishing—			IV. Debts owing to the Company.		Showing—		
		(*a*) Debts for which acceptances have been given				9	Debts considered good for which the Company hold bills or other securities.		
		(*b*) Debts to tradesmen for supplies of stock-in-trade or other articles				10	Debts considered good for which the Company hold no security		
		(*c*) Debts for law-expenses				11	Debts considered doubtful and bad		
		(*d*) Debts for interest on debentures or other loans					Any debt due from a director or other officer of the Company to be separately stated.		
		(*e*) Unclaimed dividends							
		(*f*) Debts not enumerated above							
VI. Reserve Fund.		Showing—			V. Cash and Investments.		Showing—		
		The amount set aside from profits to meet contingencies				12	The nature of investment and rate of interest		
VII. Profit and Loss.		Showing—				13	The amount of cash, where lodged, and if bearing interest		
		The disposable balance for payment of dividends, etc.							
Contingent Liabilities.		Claims against the Company not acknowledged as debts							
		Moneys for which the Company is contingently liable							

[a] *See* clauses 81 and 82 of the foregoing Table A.

TABLE B.

(*First Schedule.—Table B : Fees.*)

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES :—

	Rs.	A.	P.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal capital or part of 10,000 rupees after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 10,00,000 rupees .	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration :			
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association .	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	5	0	0

TABLE C.

TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES:—

	Rs.	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 .	40	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members or less than 50 members, of such increase	5	0	0
Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	5	0	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of	5	0	0

(First Schedule.—Form D: Form of Statement referred to in Part III of the Act. Second Schedule.—Form A: Memorandum of Association of a Company limited by Shares.

FORM D.

FORM OF STATEMENT REFERRED TO IN PART III OF THE ACT.

* The Capital of the Company is Rs. divided into shares of each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the Company on the first day of January (or July) were :—

Debts owing to sundry persons by the Company :

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the Company on that day were :—

Government securities [*stating them*], Rs.

Bills of exchange, hundis and promissory notes, Rs.

Cash at the bankers, Rs.

Other securities, Rs.

SECOND SCHEDULE.

(See section 95.)

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st—The name of the Company is "The Company, Limited."

2nd—The registered office of the Company will be situate in

3rd—The objects for which the Company is established are "

and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th—The liability of the members is limited.

5th—The capital of the Company is Rs. , divided into shares of Rs. each.

We, the several persons whose names and addresses are subscribed,

* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.*)

are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A. B.* of .	
2. *C. D.* „ .	
3. *E. F.* „ .	
4. *G. H.* „ .	
5. *I. J.* „ .	
6. *K. L.* „ .	
7. *M. N.* „ .	
Total shares taken .	

Dated the day of

Witness to the above signatures.

O. P. of

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st—The name of the Company is "The Mutual Calcutta Marine Association, Limited."

2nd—The registered office of the Company will be situate in Calcutta.

3rd—The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.*)

up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member and the costs, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

Dated the *day of*

Witness to the above signatures.

O. P. of

Articles of Association to accompany the preceding Memorandum of Association.

(1) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.)

(5) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

(10) Seven days' notice at the least, specifying the place, the day and the hour of meeting and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say:— if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty.

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.*)

(13) If, within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19) Every member shall have one vote and no more.

(20) If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the

(*Second Schedule.—Form B : Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.*)

Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, , of , being a member of the Company, Limited, hereby appoint of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary *as the case may be*] general meeting of the Company to be held on the day of and at any adjournment thereof [*or* at any meeting of the Company that may be held in the year].

As witness my hand, this day of

Signed by the said in the presence of

Directors.

(25) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

(27) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting ; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28) The directors shall be elected annually by the Company in general meeting.

Business of Company.

[*Here insert rules as to mode in which business of insurance is to be conducted.*)

Accounts.

(29) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30) The first audit-committee shall be nominated by the directors out of the body of members.

(Second Schedule.—Form B : Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.)

(31) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly draw up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

(37) The Company shall be wound up voluntarily whenever an extra-ordinary resolution, as defined by the Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily. VI of 1882.

(*Second Schedule.—Form C: Memorandum and Articles of Association of a Company limited by guarantee, and having a capital divided into Shares.*)

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of . . . . Merchant.
2. *C. D.* „ . . . . „
3. *E. F.* „ . . . . . „
4. *G. H.* „ . . . . „
5. *I. J.* „ . . . . . „
6. *K. L.* „ . . . . . „
7. *M. N.* „ . . . . . „

Dated the *day of* 18 .

Witness to the above signatures.

O. P. of

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st—The name of the Company is "The Hotel Company, Limited."

2nd—The registered office of the Company will be situate in

3rd—The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound-up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

(*Second Schedule.—Form C : Memorandum and Articles of Association of a Company limited by guarantee, and having a capital divided into Shares.*)

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

Dated the *day of* *18*

Witness to the above signatures.

O. P. of

Articles of Association to accompany the preceding Memorandum of Association.

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names —

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A. B.* of	
2. *C. D.* „	
3. *E. F.* „	
4. *G. H.* „	
5. *I. J.* „	
6. *K. L.* „	
7. *M. N.* „	
Total shares taken	

Dated the *day of* *18*

Witness to the above signatures.

O. P. of

(*Second Schedule.—Form D: Memorandum and Articles of Association of an unlimited Company having a capital divided into Shares.*)

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st—The name of the Company is "The Patent Company."

2nd—The registered office of the Company will be situate in

3rd—The objects for which the Company is established are "the working of a patent method of , of which method O. P. of is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
7. *K. L.* „
8. *M. N.* „

Dated the *day of* *18*

Witness to the above signatures.

Q. R. of

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

(*Second Schedule.—Form D : Memorandum and Articles of Association of an unlimited Company having a capital divided into Shares. Form E.*)

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses and descriptions of subscribers.	Number of shares taken by subscribers.
1. *A.* B. of 2. *C.* *D.* „ 3. *E.* *F.* „ 4. *G.* *H.* „ 5. *I.* *J.* „ 6. *K.* *L.* „ 7. *M.* *N.* „	
Total shares taken .	

Dated the *day of* *18* .

Witness to the above signatures.

Q. *R.* of

FORM E.

AS REQUIRED BY THE SECOND PART OF THE FOREGOING ACT.

Summary of capital and shares of the Company, made up to the day of .

Nominal capital Rs. , divided into shares of Rs. each.

Number of shares taken up to the day of .

There has been called up on each share Rs. .

Total amount of calls received, Rs. .

Total amount of calls unpaid, Rs. .

List of persons holding shares in the Company on the day of and of persons who have held shares therein at any time during the year immediately preceding the said day of , showing their names and addresses and an account of the shares so held.

(Second Schedule.—Form E.)

Folio in register ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.						Remarks.
	Surname.	Christian name.	Address.	Occupation.	Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.			
						Number.	Date of transfer.	Number.	Date of transfer.		

APPENDIX I.

(*Table B in Schedule to Act XIX of 1857.*)[1]

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

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[1] See s. 2 (*c*) of the Indian Companies Act, 1882 (VI of 1882), *supra*.
The Table is reproduced here as an Appendix to Act VI of 1882 for convenience of reference.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a share holder.

Forfeiture of Shares.

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made payable, on and at which such call is to be paid: it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital.

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the [1][first Monday in February] in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meeting shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held,

[1] The bracketed portion read originally as follow: " day of ."

shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say): if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

(*Appendix 1: Table B in Schedule to Act XIX of 1857.*)

Votes of Shareholders.

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten share up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of

association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company,

if he becomes bankrupt or insolvent,

if he is concerned in or participates in the profits of any contract with the Company;

if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

Rotation of Directors.

49. At the first ordinary meeting after the incorporation of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election

takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

56. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business; questions arising at any meeting shall be decided by a majority of votes; in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote: a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

(*Appendix I: Table B in Schedule to Act XIX of 1857.*)

62. The director shall cause minutes to be made in books provided for the purpose—

(1) of all appointments of officers made by the directors;

(2) of the names of the directors present at each meeting of directors and committees of directors;

(3) of all orders made by the directors and committees of directors; and

(4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

Accounts.

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for

the past year made up to a date not more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

(*Appendix I: Table B in Schedule to Act XIX of 1857.*)

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

Form of Balance-Sheet referred to in Table B.

Dr. *Balance-Sheet[a] of the* *Company made up to* 18 . *Cr.*

Capital and Liabilities.			R a. p.	R a. p.	Property and Assets.			R a. p.	R a. p.
I.—Capital .	1	Showing— The total amount received from the shareholders; showing also— (a) The number of shares . . (b) The amount paid per share . (c) If any arrears of calls, the nature of the arrear, and the names of the defaulters . . . (Any arrears due from any Director or officer of the Company to be separately stated.) (d) The particulars of any forfeited shares			III.—Property held by the Company.	4	Showing— Immoveable property, distinguishing— (a) Land (describing tenure) . . (b) Buildings.		
						5	Moveable property, distinguishing— (c) Stock-in-trade . . . . (d) Plant		
							(The cost to be stated with deduction for deterioration in value as charged to the Reserve Fund or Profit and Loss).		
II.—Debts and Liabilities of the Company.	2	Showing— The amount of loans on mortgage or debenture bonds			IV.—Debts owing to the Company.	6	Showing— Debts considered good for which the Company hold bills or other securities		
	3	The amount of debts owing by the Company, distinguishing— (a) Debts for which acceptances have been given . . . (b) Debts to tradesmen for supplies of stock-in-trade or other articles. (c) Debts of law expenses . . (d) Debts for interest on debentures or other loans . . . (e) Unclaimed dividends . . (f) Debts not enumerated above .				7	Debts considered good for which the Company hold no security . . .		
						8	Debts considered doubtful and bad . (Any debt due from a Director or other officer of the Company to be separately stated.)		
					V.—Cash and Investment.	9	Showing— The nature of investment and rate of interest		
						10	The amount of cash, where lodged, and if bearing interest . . .		
VI.—Reserve Fund.		Showing— The amount set aside from profits to meet contingencies.							
VII.—Profit and Loss.		Showing— The disposable balance for payment of dividend, etc.							
Contingent Liabilities.		Claims against the Company not acknowledged as debts. Moneys for which the Company is contingently liable.							

[a] See clause 71 and 72 of the foregoing Table B.

ACT No. VII OF 1882.[1]

[*24th February 1882.*]

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney; It is hereby enacted as follows :—

Short title. Local extent. Commencement.

1. This Act may be called the Powers-of-Attorney Act, 1882.

It applies to the whole of British India ;

and it shall come into force on the first day of May 1882.

Execution under power-of-attorney.

2. The donee of a power-of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Payment by attorney under power, without notice of death, etc., good.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of original instruments creating powers-of-attorney.

4. (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

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[1] For Statement of Objects and Reasons, see Gazette of India, 1881, Pt. V, p. 1473; for Proceedings in Council, *see ibid*, 1881, Supplement, p. 1409, and *ibid*, 1882, Supplement, p. 204.

Act VII of 1882 has been declared in force in the Santhal Parganas by s. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben Code.

(*b*) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

[1](*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (*a*), (*b*) and (*c*)[2].

(*f*)[3] * * * * *

(*g*) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

Power-of-attorney of married women.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. [*Act XXVIII of 1866, s. 39, repealed.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

ACT No. VIII OF 1882.[4]

[*2nd March 1882.*]

An Act to amend the Indian Penal Code.[5]

Preamble. For the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

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[1] For instance of rules made and fees prescribed under this clause, *see* Mad. R. and O.; Bom. R. and O.; Bur. R. M.

[2] For Madras High Court Fees Rules made under this Act and the Indian High Courts Act, 1861 (24 & 25 Vict., C. 104), *see* Fort St. George Gazette, 1902, Supplement, dated 1st July, p. 1.

[3] Cl. (*f*) was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II.

[4] Short title, "The Indian Penal Code Amendment Act, 1882." *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 151; for Proceedings in Council, *see ibid*, 1881, Supplement, p. 253, and *ibid*, 1882, Supplement, p. 329.

Act VIII of 1882 has been declared in force in the Santhál Parganas by s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code. As amending the Indian Penal Code it is in force in Upper Burma generally (except the Shan States), *see* the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*) and Sch. I.

[5] General Acts, Vol. I.

Amendment of section 40, clause 2, of Indian Penal Code.

1. In the second clause of section 40 of the said Code, before the figure "109" the figures "64, 65, 66, 71" shall be inserted.[1]

Amendment of section 64 of same Code.

2. In section 64 of the said Code, for the first twelve words the following shall be substituted, namely:—

"In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

"and in every case of an offence punishable[1] with fine only, in which the offender is sentenced to a fine."

Amendment of section 67 of same Code.

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

Addition to section 71 of same Code.

4. To section 71 of the said Code the following clause shall be added:—

"where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Amendment of section 73 of same Code.

5. In section 73 of the said Code, for the words "be less than a" the words "shall not exceed one" shall be substituted.

New *exception* to section 214 of same Code.

6. In section 214 of the said Code, for the *exception* the following shall be substituted, namely:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

Amendment of section 309 of same Code.

7. In section 309 of the said Code, for the last seven words the words "or with fine or with both" shall be substituted.

Amendment of section 335 of same Code.

8. In section 335 of the said Code, before the words "causes" the word "voluntarily" shall be inserted.

Amendment of section 410 of same Code.

9. In section 410 of the said Code, after the words "designated as 'stolen property'" the following words shall be inserted, namely:—"whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India;" and the words offence of" shall be omitted.

[1] For further amendment *see* the Indian Criminal Law Amendment Act, 1886 (X of 1886), *infra*.

Addition to section 435 of same Code.

10. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely :—

"or (where the property is agricultural produce) ten rupees or upwards."

Local extent. Commencement.

11. This Act extends to the whole of British India; and shall come into force on the first day of January 1883.

THE INDIAN SALT ACT, 1882.

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THE SCHEDULE.—ENACTMENTS REPEALED.

ACT No. XII OF 1882.[1]

[*10th March 1882.*]

An Act for regulating the duty on Salt, and for other purposes.

Preamble. WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over and in British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. Commencement. 1. This Act may be called the Indian Salt Act, 1882; and it shall come into force at once.

Local extent. This section, sections 2, 7 and 8, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India;

the rest of this Act extends to the territories for the time the being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, the Central Provinces and Ajmere and Merwara, [2] * * * to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India;

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1 For Proceedings in Council, *see* Gazette of India, 1882, Supplement, p. 261, and Extra Supplement, p. 34.

Act XII of 1882 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation, 1872 (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; and in British Baluchistan, *see* the British Baluchistan Laws Regulation, 1890 (I of 1890), s 3, Bal. Code.

Ss. 1, 2, 6, 7 and 8 and Chapter IV has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). So much of the Act as was in force in Lower Burma had previously been extended by notification under the Scheduled Districts Act, 1874 (XIV of 1874). *see* Gazette of India, 1889, Pt. I, p. 334.

2 The words "to the Province of Sindh" were repealed by Act XX of 1884 which was brought into force on 2nd October 1890. Bom. Govt. Gazette, 1890, Pt. I, p. 954.

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended[1], by order of the Governor General in Council published in the Gazette of India, to any part of British India other than the territories, [2] * * and Districts mentioned in the third paragraph of this section. Power to extend Act.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder. Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause:

the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends; "the said territories";

"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act[3]; "Assistant Commissioner;"

"Salt-revenue-officer" means any officer of the Northern India Salt Department and also includes any person invested[4] by the Local Government with any of the powers of a Salt-revenue-officer under this Act; "Salt-revenue-officer;"

"Saltpetre" includes rasi, sajji and all other substances manufactured from saline earth, and khárínún and every form of sulphate or carbonate of soda; and "Saltpetre;"

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[1] Under this power—

(1) the Act with certain exceptions has been extended to the Districts of the Orissa Division, *see* Notification No. 769, dated 11th February 1888, Gazette of India, 1888, Pt. I, p. 67: a portion of this Notification was rescinded by Notification No. 2-5 -S.R., dated 1st May 1901, *ibid*, Pt. I, p. 337;

(2) s 6 has been extended to Lower Burma, *see* Bur. R. M.;

(3) the Act with certain exceptions has been extended to the Districts of Howrah and Noakhali in Bengal, and the rules applicable to O is-a referred to in (1) extended thereto: Gazette of India, 1901, Pt. I, p. 139; Notification Nos. 1142-4 S. R., dated 2nd March 1901;

(4) the Act with certain exceptions has been extended to Calcutta (as defined by Ben. Act III of 1899), and to the area included within two miles from its limits: Gazette of India, 1901, Pt. I, p. 233: Notification No. 1907 S R., dated 10th April 1901;

(5) the Act with certain exceptions has been extended to the Districts of 24-Parganas (except Calcutta), Midnapur, Khulna, Backergunge and Chittagong; Gazette of India, 1898, Pt. I, p. 376, Notification No. 1594-S. R., dated 9th April 1898, and Gazette of India, 1901, Pt. I, p. 337; Notification No. 2756-S. R., dated 21st May 1901, rescinding a portion thereof.

[2] The word "Province" was repealed by Act XX of 1884; *see* foot-note (2) on previous page.

[3] For persons so invested in certain Districts in Bengal, *see* Ben. R. and O.

[4] Police-officers in the United Provinces have been invested with the powers of a Salt-revenue-officer, see U. P. R. and O.

"Manufacture of salt."

"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence:

"Kohat salt."

[1]"Kohat salt" means salt produced in the district of Kohat in the Punjab.

Powers of Commissioner of Division by whom to be exercised.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer[2] as the Governor General in Council may from time to time appoint in this behalf.

Commissioner of Northern India Salt-revenue.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor General in Council—

6. The Governor General in Council may, from time to time, by rule—

to regulate manufacture and refining of salt and saltpetre;

(*a*) [3] prohibit absolutely, or subject to such conditions as he thinks fit the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

to fix fees for licenses;

(*b*) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining . .	50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (*khárínún*) by solar heat in evaporating pans	10
License to manufacture sulphate of soda (*khárínún*) by artificial heat	2
License to manufacture other saline substances	2

to regulate the collection of duties;

(*c*) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;[4]

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[1] This definition of "Kohat salt" in s. 3 was added by the Indian Salt Act (1882) Amendment Act, 1890 (XIX of 1890), s. 1, General Acts, Vol. IV.

[2] For notification conferring power on the Revenue Commissioner of the North-West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 950.

[3] For instances of such prohibitory notification, *see* Gazette of India, 1898, Pt. I, p. 948; for Bengal, *see* Ben. R. and O., Gazette of India, 1901, Pt. I, p. 139; for the Punjab, *see* Punj. R. and O.

[4] In Burma it has been directed that the duty leviable under s. 7 shall be recovered as arrears of land-revenue, *see* Bur. R. M.

(*d*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area ; — to regulate possession of salt in vicinity of places where saltpetre is manufactured ;

(*e*) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area. — to regulate possession of salt in vicinity of places where salt is manufactured.

CHAPTER III.

DUTY AND PRICE OF SALT.

7. The Governor General in Council may from time to time, by rule consistent with this Act,— Power of Governor General in Council—

[1] (*a*) impose a duty, not exceeding three rupees per maund of 82$\frac{2}{7}$ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ; — to impose a duty on manufacture of salt ;

[2] (*b*) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ; — to reduce or remit duties ;

(*c*) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold. — to fix minimum price of salt excavated, etc., by Government.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

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[1] For notification imposing a duty on salt manufactured in—
(1) the Kohat District, *see* Gazette of India, 1903, Pt. I, p. 214 ;
(2) or imported into British India except Burma, *see* Gazette of India, 1903, Pt. I, p. 214 ;
(3) the Kalabagh Mines west of the Indus, *see* Gazette of India, 1888, Pt. I, p. 48 ;
(4) Upper Burma, exclusive of the Shan States, *see* Notification No. 1542-S. R., dated 18th March 1903, Burma Gazette, 1903, Pt. II, p. 122 ;
(5) Aden, *see* Bom. R. and O.

For notification imposing duty to be paid on salt manufactured in or imported by land into British India, *see* Gazette of India, 1907, Pt. I, p. 241.

For notification imposing duty on salt imported into certain parts of British Baluchistan and the Ageney Territories, *see* Gazette of India, 1902, Pt. I, p. 5.

[2] For notification remitting the duty imposed on refuse salt of the Punjab mines used for manufacture of glazed stoneware and pottery, *see* Gazette of India, 1893, Pt. I, p. 214.

For notifications remitting duty on salt manufactured in Madras and exported to Straits Settlements, Mauritius, Zanzibar or Travancore, *see* Gazette of India, 1901, Pt. I, p. 608.

For notifications remitting the duty on Madras salt imported under rules to British Indian ports and two per cent. on the duty on such salt when exported by seat to such ports under rules framed by the Government of Madras, *see* Gazette of India, 1904, Pt. I, pp. 616, 617.

For notification remitting up to a maximum of 5 per cent. duty on actual amount of wasted salt manufactured in the Bombay Presidency when exported to certain ports in British India, *see* Gazette of India, 1905, Pt. I, p. 371.

Power of Local Government to fix minimum price of salt excavated, etc.

8. Subject to any general rules or special orders which the Governor General in Council may, from time to time, make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.[1]

CHAPTER IIIA.[2]

INDUS PREVENTIVE LINE.

Power to define zones and establish chains of posts.

8A. (*1*) The Governor General in Council may from time to time, by rule,—

(*a*) define a zone of country not exceeding fifteen miles in breadth—

(*i*) along any portion of the river Indus and at such distance therefrom as he deems expedient, or

(*ii*) in any tract extending from that river to the western frontier of the Punjab,

(*b*) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(*c*) within such a zone establish a chain of posts extending along the zone.

(*2*) The establishment of a chain of posts under clause (*c*) of sub-section (*1*) shall be deemed to be a public purpose within the meaning of the Land-acquisition Act, 1870.[3] X of 1870.

Effect of defining a zone and establishing a chain of posts.

8B. When a zone has been defined and a chain of posts established under section 8A, the Governor General in Council may from time to time, by rule,—

(*a*) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,

(*b*) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the

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[1] For notifications fixing the price of salt at—
(1) Aden *see* Bom. R and O.;
(2) Tuticorin for export of Penang and Kattanguli in the Tinnevelly District *see* Mad. R. and O.

[2] Ch. IIIA was inserted by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 2, General Acts, Vol. IV.

[3] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

passage of traffic across such chain, and provide for the searching of all persons and things crossing and being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties.

9. Whoever commits any of the following offences (namely) :—

(*a*) does anything in contravention of this Act or of any rule made hereunder ;

(*b*) evades payment of any duty or charge payable under this Act or any such rule, or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code [1] the commission of any of the offences mentioned in clauses (*a*) and (*b*) of this section,

XLV of 1860.

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both ;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue-officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,[2] or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9 ;

VIII of 1875.

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

11. A charge of an offence under section 9,[3] * * * shall not be entertained except on the complaint of an Assistant Com-

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[1] General Acts, Vol. I.

[2] Act VIII of 1875 is repealed by this Act, see sch., *infra*.

[3] The words and figures " or under section 11 of the Inland Customs Act, 1875, " were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

missioner or other Salt-revenue-officer not inferior in rank to a Sub-Inspector,

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to consfication.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue-officer, or on such enquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as penalty.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

Punishment for connivance at offences mentioned in section 9.

14. Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

Power to search places where article is manufactured under license.

15. Any Salt-revenue-officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any Salt-revenue-officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act,

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

Power to arrest.

17. Any Salt-revenue-officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Procedure of officer having reason to believe unlawful manufacture.

18. Whenever any Salt-revenue-officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place, such officer shall first record in writing (so far as may be practicable) (*a*) the name, residence and calling of the informant (if any), (*b*) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored, (*c*) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored, and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the police-

station within whose jurisdiction the house, boat or place to be searched is situate to attend him ;

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored ;

and, in case of resistance, may break open any door, and force and remove, any other obstacle to such entry ;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre ;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement or storing of such salt or saltpetre or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.[1]

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.[2]

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.[3]

Failure of Police-officer to attend.

19. Any officer in charge of a police-station who, on application in writing made by a Salt-revenue-officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure and search.

20. Whenever a Salt-revenue-officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

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[1] *See* now the proviso to s. 48 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

[2] *Cf.* s. 103 of Act V of 1898, *ibid.*

[3] *Cf.* s. 52 of Act V of 1898, *ibid.*

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior, for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

Procedure in respect of articles seized.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

If the articles seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure on detention of articles subject to additional duty.

22. Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt-revenue-officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has

received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in respect of person arrested.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers required to assist Salt-revenue-officers.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue-officers in the execution of this Act.

Vexatious search, seizure, etc., by Salt-revenue-officer.

25. Any Salt-revenue-officer who—

(*a*) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(*b*) vexatiously and unnecessarily detains, searches or arrests any person;

(*c*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(*d*) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for term which may extend to two years, or with both.

[1][A Salt-revenue-officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and

[1] This paragraph was added to s. 25 by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 3, General Acts, Vol. IV.

unnecessarily within the meaning of clause (*b*) or clause (*c*) of the first paragraph of this section if the search is authorized by any rule under clause (*b*) of section 8B, and the detention or seizure is such as is necessary for the purposes of such search.]

Power to regulate seizures and disposal of things seized.

26. The Governor General in Council may from time to time make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

(*b*) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

Power to prohibit import and transit of salt.

27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

[1][Nothing in this section shall be deemed to affect Chapter IIIA of this Act or any rule under that Chapter.]

Further matter for

28. In addition to the rules which the Governor General in Council is

[1] This paragraph was added to s. 27 by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 4, General Acts, Vol. IV.

which Governor General in Council may make rules.

hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely:—

(*a*) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;

(*b*) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue-officers under this Act shall be appealable;

(*c*) the fee to be charged on account of any license, pass, certificate dákhilá, rawána or other such document issued under this Act;

[1]and generally to carry out the provisions herein contained.

Publication of rules.

29. All rules[2] made under this Act shall be published in the Gazette of India, and shall thereupon have the force of law.

Power to confer powers of Assistant Commissioner and Salt-revenue-officers.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor Geheral in Council, the Local Government or the Commissioner of the Northern India Salt-revenue may [3]invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue-officers.

31. *Amendment of Madras Act VI of 1871.* [*Rep. by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 5.*]

SCHEDULE.

(*See section* 2.)

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Number and year.	Short title.	Extent of repeal.
VIII of 1875 . .	The Inland Customs Act, 1875 .	The whole.
II of 1876 . .	The Burma Land and Revenue Act, 1876.	Section 39, clause (*b*), and in clause (*c*) of the same section the words and letter "under clause (*b*)."
XVIII of 1877 . .	The Salt Act, 1877 . . .	The whole.

[1] For rules as to through booking of salt made under this section, *see* Gazette of India, 1889, Pt. I, p. 422; 1890, Pt. I, p. 211; 1892, Pt. I, p. 426. For rules as to the manufacture of salt under license, *see* Gazette of India, 1884, Pt. I, p. 246.

As to rules for the Orissa Division of the Presidency of Madras, *see* Mad. R. and O.

[2] For rules for Calcutta, *see* Gazette of India, 1901, Pt. I, p. 234; *ibid*, 1902, Pt. I, p. 315; the districts of the Orissa Division, *see* Gazette of India, 1888, Pt. I, p. 67; *ibid*, 1897, Pt. I, p. 873; *ibid*, 1898, Pt. I, p. 376; *ibid*, 1901, Pt. I, p. 337; the districts of 24-Parganas (except Calcutta), Midnapur, Khulna, Backergunge, and the Punjab, *see* Punj. R. and O., Chittagong; *see* Gazette of India, 1898, Pt I, p. 376; *ibid*, 1901, Pt. I, p. 337.

[3] For notification issued for (1) Ajmer-Merwara, *see* Gazette of India, 1887, Pt. I, p. 435; (2) Bengal, *see* Ben. R. and O; (3) the Punjab, *see* Punj. R. and O.

Regulation.

Number and year.	Short title.	Extent of repeal.
III of 1877 . .	The Ajmere Laws Regulation, 1877.	Sections 36 and 37.

Act of the Lieutenant-Governor of Bengal in Council.

Number and year.	Short title.	Extent of repeal.
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THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

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ACT No. XV OF 1882.[1]

[*17th March 1882.*]

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Presidency Small Cause Courts Act, 1882;

Commencement. and it shall come into force on the first day of July, 1882.

But nothing herein contained shall affect the provisions of the Army Act, 44 & 45 Vict., c. 58. * * [2] section 151, [3] or the rights or liabilities of any person under any decree passed before that day.

Repeal of enactments. **2.** On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

References in previous Acts. All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

Amendment of Acts. "Small Cause Court" defined. **3.** In Act No. XXIII of 1850[4] (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII, 1847," the words and figures "the Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 376; for first Report of the Select Committee, see *ibid*, 1881, Pt. V, p. 381; for further Report of the Select Committee, see *ibid*, 1882, Pt. V, p. 3; for proceedings in Council, see *ibid*, Supplement, 1880, pp. 1394 and 1433; *ibid*, 1882, Supplement, p. 204; and *ibid*, 1882, Extra Supplement, p. 43.

[2] The figures "1881" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] Coll. Stat., Vol. II.

[4] The Calcutta Land-revenue Act, 1850, Ben. Code.

Commissioners" the words "the Judges of the Court of the Small Causes at Calcutta" shall be substituted.

[1] * * * * * *

"Small Cause Court" defined.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, [2][and the expression "Registrar" includes a Deputy Registrar.]

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Cause established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

Court to be deemed under superintendence, etc., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the [3]Code of Civil Procedure [4][and to be a Court subordinate to the High Court within the meaning of section 6 of the [5]Legal Practitioners Act, 1879], and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the [6]twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

XIV of 1882.

XVIII of 1879.

Appointment, suspension and removal of Judges.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court:

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[1] The last paragraph of section 3 (amending s. 8 of Act XIV of 1882) was repealed by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Schedule V; *cf.* s. 8, Act V of 1908, General Acts, Vol. VI.

[2] These words were added to s. 4 by s. 2 of the Presidency Small Cause Courts Act, 1899 (III of 1899), General Acts, Vol. V.

[3] *See* now the Code of Civil Procedure, 1908, Act V of 1908, General Acts, Vol. VI.

[4] These words were added by s. 2 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol IV.

[5] General Acts, Vol. III.

[6] Coll. Stat., Vol. I.

[1] Provided that no person shall be appointed to be a Judge of such Court, or be authorized to exercise the powers of a Judge of such Court, unless he is—

(*a*) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861,[2] or 24 & 25 Vict., c. 104.

(*b*) a vakil or attorney of any such High Court, or

(*c*) a Judge of a Court of Civil Judicature of not less than five years' standing:

and that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may by a like notification suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

* * * * * * * * * * * * [3]

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Performance of duties of absent Judge.

[4]**8A.** (*1*) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be.

(*2*) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

Procedure and practice of Small Cause Court.

[5]**9.** (*1*) The High Court may, from time to time, by rules[6] having the force of law,—

(*a*) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to

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[1] This proviso was substituted for the original proviso by Act I of 1895, s. 3 (*1*).

[2] Coll. Stat., Vol. I.

[3] The last paragraph was repealed by s. 3 (*2*) of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

[4] S. 8A was substituted by s. 3 of the Presidency Small Cause Courts Act, 1899 (III of 1899), General Acts, Vol. V, for the original s. 8A, inserted by Act I of 1895, s. 4, General Acts, Vol. IV.

[5] This section was substituted for the original s. 9 by Act I of 1895, s. 5.

[6] For notifications prescribing such rules in—

(*1*) Bengal, *see* Calcutta Gazette, 1900, Pt. I, p. 929;

(*2*) Bombay, *see* Com. R. and O.; Bombay Gazette, 1900, Pt. I, p. 131;

(*3*) Madras, *see* Mad. R. and O.; Fort St. George Gazette, 1906, Pt. II, Supplt., p. 1.

any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force; and

[1](*aa*) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and

(*b*) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(*2*) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.

Chief Judge to distribute business of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Procedure in case of difference of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being [2] prescribed by the Local Government.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint [3][a Deputy Registrar and] as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers

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[1] Cl. (*aa*) was added by s. 4 of the Presidency Small Cause Courts Act, 1899 (III of 1899), General Acts, Vol. V.

[2] For notifications under this section in—
(*1*) Bombay, *see* Bom. R. and O.;
(*2*) Madras, *see* Mad. R. and O.

[3] These words are inserted by s. 5 of the Presidency Small Cause Courts Act, 1899 (III of 1899), General Acts, Vol. V.

and duties conferred and imposed on it by this Act or any other law for the time being in force.

Power and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

[1] *Explanation.*—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit.

Judge or other officer not to practice or trade.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code. [2] XLV of 1860.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, etc,

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause

[1] This explanation was added by s. 6 of the Presidency Small Cause Courts Act, 1895 (I of 1895) General Acts, Vol. IV.
[2] General Acts. Vol I.

Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

under Act to be decided according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local limits of jurisdiction of Court.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees: and—

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside or carry on business or personally work for gain, within such local limits; or

(*c*) any of the defendants at the time of the institution of the suit, actually or voluntarily resides or carries on business, or personally works for gain, within such local limits and either the leave of the Court has been given before the institution of the suit or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution:

[1] Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.

Explanation I.—When in any suit the sum claimed is by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be

[1] This proviso was added by s. 7 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol IV.

deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Plaintiff may abandon suit against defendant resident out of jurisdiction.

[1] **18A.** The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(*c*) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to or interest in immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits for a general average loss and suits on policies of insurance on sea-going vessels;

[1] S. 18A was added by s. 8 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

(*m*) suits for compensation in respect of collisions on the high seas;

(*n*) suits for compensation for the infringement of a patent, copyright or trade-mark;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits for possession of a hereditary office;

(*u*) suits against Sovereign, Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*v*) suits on any judgment of a High Court;

(*w*) suits, the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Return of plaint.

[1]**19A.** Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure [2] and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877, [3] be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.

XIV of 1882.

XV of 1877.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement [4] in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall

[1] S. 19A was added by s. 9 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order VII, rule 10 (2), General Acts, Vol. VI.

[3] *See* now the Indian Limitation Act, 1908 (IX of 1908), General Acts, Vol. VI.

[4] As to additional fee payable on the filing of such agreement, *see* s. 71, *infra*.

have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and against officers of Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof [1][and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

22. If any suit cognizable by the Small Cause Court other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than [2][one thousand] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no cost shall be allowed to the plaintiff ;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Portions of Civil Procedure Code extending to Court.*] *Rep. Act I of 1895, s. 12.*

No written statement except in cases of set-off.

24. Except in cases of set-off under the Code of Civil Procedure, section 111,[3] no written statement shall be received unless required by the Court. XIV of 1882.

Return of documents admitted in evidence.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous

[1] These words were inserted by s. 10 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

[2] These words were substituted for the words "two thousand" by s. 11 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

[3] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order VIII, rule 6, General Acts, Vol. VI.

of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under section 143 of the Code of Civil Procedure,[1] be entitled to receive back the same : XIV of 1882.

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct : provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made under section 278 of the Code of Civil Procedure,[2] is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Decree-holder to accompany officer executing warrant.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove wit out the permission of his landlord, shall, for the purpose of

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXI, rule 58, General Acts, Vol. VI.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XIII, rule 8.

be deemed moveable in execution.

the execution of such decree [1] [and for the purpose of deciding all questions arising in the execution of such decree,] be deemed to be moveable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Discharge of judgment-debtor on sufficient security.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

Court may in certain cases suspend execution of decree.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it hinks fit.

Execution of decree of Small Cause Court by other Courts.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(*a*) in the case of execution against immoveable property situate within such local limits—[2] [to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be;]

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred.

The procedure prescribed by the Code of Civil Procedure[3] for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases. XIV of 1882.

Minors may sue in certain

32. Notwithstanding anything contained in the Code of Civil Procedure[3] as applied by this Act, any minor may institute a suit for any sum of XIV of 1882.

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[1] These words were inserted by s. 2 of the Presidency Small Cause Courts Act, 1906 (IV of 1906), General Acts, Vol. VI.

[2] These words were substituted for the words "to the High Court" by the Madras City Civil Court Act, 1892 (VII of 1892), s. 12, Mad. Code.

[3] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872,[1] for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

cases as if of full age.

IX of 1872.

XIV of 1882.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure,[2] as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

Power to delegate non-judicial duties.

The High Court may, from time to time, by rule,[3] declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same :

Registrar to hear and determine suits like a Judge.

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Proviso.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Registrar may execute all decrees with the same powers as a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

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[4] CHAPTER VI.

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

General finality of decrees and orders of Small Cause Court.

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[1] General Acts, Vol. II.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

[3] For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts which may be done by the Registrar, *see* Mad. R. and O.

[4] This Chapter was substituted for the original Chap. VI by s. 13 of the Presidency Small Cause Courts Act, 1895 (I of 1895), General Acts, Vol. IV.

New trial of contested cases.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passsed under section 522 of the [1]Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms at it thinks reasonable, and may, in the meantime, stay the proceedings. XIV of 1882.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

Removal of certain causes into High Court.

39. (*1*) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause intothe High Court.

[2] (*2*) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right:

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.

(*3*) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

(*4*) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

Rules with respect to

40. (*1*) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. II, s. 16, General Acts, Vol. VI.

[2] This sub-section was substituted for the original sub-section (2) by s. 3 of the Presidency Small Cause Courts Act, 1906 (IV of 1906), General Acts, Vol. VI.

exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court. **suits removed under the last foregoing section.**

(*2*) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (*1*), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure[1] unless the Court shall otherwise order. XIV of 1882.

(*3*) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.

CHAPTER VII.

Recovery of Possession of Immoveable Property.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims, **Summons against person occupying property without leave.**

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply[2] to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure[3] for the service of a summons on a defendant. **Service of summons.** XIV of 1882.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order. **Order for possession.**

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[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order VIII, rule 11, General Acts, Vol. VI.

[2] For fee on such application, *see* s. 71, *infra*.

[3] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. V

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Such order to justify bailiff entering on property and giving possession. Bar to proceedings against Judge or officer for issuing, etc., order or summons.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings. Occupant may sue for compensation.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Liability of applicant obtaining order when not entitled.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Application for order in such case an act of trespass.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Stay of proceedings on occupant giving security.

47. Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and

the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant, for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of. to bring suit against applicant.

XLV of 1860.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

48. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the [1]Code of Civil Procedure. Proceedings to be regulated by Code of Civil Procedure.

XIV of 1882.

49. Recovery of the possession of any immoveable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto. Recovery of possession no bar to suit to try title.

CHAPTER VIII.

DISTRESSES.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay. But nothing contained in this Chapter applies— Local extent of Chapter. Saving of certain rents.

(*a*) to any rent due to Government;

(*b*) to any rent which has been due for more than twelve months before the application mentioned in section 53.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this Chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them. Appointment of bailiffs and appraisers.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.[2] Security to be given by appointees.

XLV of 1860.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, Application for distress wrarant.

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.
[2] General Acts, Vol. I.

may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue of distress warra

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Time for distress.

55. Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time.

What places bailiff may force open.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter:

Provided that he shall not enter or break open the door of any room appropriated for the zenáná or residence of women, which by the usage of the country is considered private.

Property which may be seized.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

(*a*) things in actual use; or

(*b*) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or

(*c*) the debtor's necessary wearing apparel; or

(*d*) goods in the custody of the law.

Impounding distress.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Inventory.

59. On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the

Notice of intended ap-

effect of the form (marked C) in the third schedule hereto annexed to the

debtor, or to any other person upon his behalf in or upon the said house or premises. praisement and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice. Copies of inventory and notice to be filed.

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, Application to discharge or suspend warrant.

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant. Claim to goods distrained made by a stranger.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, Power to award compensation to debtor or claimant.

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Power to transfer to High Court cases involving more than one thousand rupees.

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

Appraisement.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

Sale.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Application of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

Costs of distresses.

66. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

Account of costs and proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

Bar of distresses except under this Chapter.

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter;

Penalty for making illegal distresses.

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

Reference when compulsory.

[1] **69.** (*1*) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the

[1] This section was substituted for the original s. 69 by s. 4 of the Presidency Small Cause Courts Act, 1906 (IV of 1906), General Acts, Vol. VI.

[1]Code of Civil Procedure, shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617[2] of the said Code.

(*2*) When the Small Cause Court refers any question for the opinion of High Court as provided in sub-section (*1*), it shall either reserve judgment or give judgment contingent upon such opinion.

Security to be furnished on such reference by party against whom contingent judgment given.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

If no such security given, party to be deemed to have submitted to judgment.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

CHAPTER X.

FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(*a*) when the a nount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees,

shall be paid on the plaint in every suit, and every application under [3] * * * section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

Fees for processes.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XLVI, rules 3 to 5, General Acts, Vol. VI.

[2] *See* now *ibid*, Sch. I, Order XLVI, rule 1.

[3] The words and figures "section 38 or" were repealed by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (VII of 1896), General Acts, Vol. IV.

proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

Repayment of half fees on settlement before hearing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Fees and costs of poor persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

Power to vary fees.

75. The Local Government may from time to time, by [1] notification in the official Gazette, vary the amount of the fees payable under sections 71 and 72 :

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of employing legal practitioners.

76. The expense of employing an advocate, vakíl, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-fees Act, 1870.[2]

VII of 1870.

CHAPTER XI.

Misconduct of Inferior Ministerial Officers.

Power to fine officers.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Default of bailiff or other officer

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant,

[1] For notifications under s. 75 in—
(1) Bombay, *see* Bom. R. and O.
(2) Madras, *see* Mad. R. and O.

[2] General Acts, Vol. II.

in execution of order or warrant.

loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Extortion or default of officers.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Court empowered to summon witnesses, etc.

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Enforcement of order.

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

Procedure of Court in certain cases of contempt.

83. When any such offence as is described in sections 175, 178, 179, 180 or 228 of the Indian Penal Code [1] is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid. XLV of 1860.

Record in such cases.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

XLV of 1860. If the offence is under section 228 of the Indian Penal Code, [1] the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

Procedure where Court considers that case should not be dealt with under section 83.

85. If the Court considers that a person accused of any offence referred to in section 83 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided IV of 1877. by the [2]Presidency Magistrates' Act, 1877, and may sentence the offender to XLV of 1860. punishment as provided in the section of the Indian Penal Code [1] under which he is charged.

Discharge of offender on submission or apology.

86. When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 83 or section 85.

Appeal from orders under sections 83 and 87.

88. Any person deeming himself aggrieved by an order under section 83 or section 87 may appeal to the High Court, and the provisions of the Presi-

[1] General Acts, Vol. I.

[2] The reference to the Presidency Magistrates' Act, 1877, should now be read as referring to the Code of Criminal Procedure, 1898 (Act V of 1898), *see* s. 3 of that Code, General Acts, Vol. V. Act IV of 1877 was repealed by Act X of 1882, which was repealed by Act V of 1898.

dency Magistrates' Act, 1877 [1], relating to appeals shall, so far as may be, apply to appeals under this section. IV of 1877.

CHAPTER XIII.

MISCELLANEOUS.

Persons by whom process may be served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers and returns.

90. The Small Cause Court shall keep such registers, books and accounts and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be [2] prescribed by the High Court.

Court to furnish records, etc., called for by Local Government or High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Certain persons exempt from arrest by Court.

93. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, [3] shall not be liable to arrest by order of the Small Cause Court. 24 & 25 Vict., c. 104.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

Place of imprisonment.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Tender in suit for anything done under Act.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

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[1] The reference to the Presidency Magistrates' Act, 1877, should now be read as referring to the Code of Criminal Procedure, 1898 (Act V of 1898), *see* s. 3 of that Code, General Acts, Vol. V. Act IV of 1877 was repealed by Act X of 1882, which was repealed by Act V of 1898.

[2] For rules prescribing such register, etc, in Madras, *see* Mad. R. and O.

[3] The Indian High Courts Act, *see* Coll. Stat., Vol. I.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed. **Limitation of prosecutions.**

THE FIRST SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March 1774 . .	Charter of the Supreme Court at Fort William.	Clause 21.
26th December 1800 .	Charter of the Supreme Court at Madras.	Clause 47.
8th December 1823 .	Charter of the Supreme Court at Bombay.	Clause 59.

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 . . .	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 . . .	To amend Act IX of 1850 . . .	The whole.
XXVI of 1864 . .	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of those Courts.	So much as has not been repealed.
I of 1875 . . .	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X of 1877 [1] . . .	The Code of Civil Procedure . .	Section 8, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 . . .	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

[*Repealed by Act I of 1895, s. 12.*]

THE THIRD SCHEDULE.

FORMS.

A.

[*See section 53.*]

In the Small Cause Court for
A. B.——————(plaintiff),
versus
C. D.——————(defendant).

A. B., of——————, in the town of——————
maketh oath (*or* affirms) and saith that *C. D.*——————, of——————, is justly indebted to——————in the sum of Rs.——————for arrears of rent of the house and premises No.——————, situated at——————, in the town of——————, due for——————months, to wit, from——————to——————, at the rate of Rs.——————per mensem.

Sworn *or* affirmed before me the——————day of——————, 188 .

Judge [or *Registrar*].

B.

[*See section 54.*]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No.——————, in the town of——————, for the sum of——————Rs. the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated day of 18 .

Signed and sealed.

To *E. F., Bailiff and Appraiser.*

C.

[*See section 59.*]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(*State particulars of property seized.*)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of——————Rs., being the amount of——————month's rent due to *A. B.* at——————last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the day of 18 .

(Signed) *E. F.*,
Bailiff and Appraiser.

To *C. D.*

THE THIRD SCHEDULE—*continued.*

D.

[*See section 64.*]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the _____ day of _____, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or* upon _____ on your behalf, *as the case may be*] under date the _____, and that the said property will be sold on the _____ [*two clear days at least after the date of the notice*] at _____ pursuant to the provisions of the said Act. Dated this _____ day of _____ 18 .

(Signed) *E. F.,*
G. H.,
Bailiffs and Appraisers.

To *C. D.*

E.

[*See section 66.*]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.	Affidavit and warrant to distrain.	Order to sell.	Commission.	TOTAL.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Rs. Rs.				
1 and under 5 . . .	0 4 0	0 8 0	0 8 0	1 4 0
5 „ 10 . . .	0 8 0	0 8 0	1 0 0	2 0 0
10 „ 15 . . .	0 8 0	0 8 0	1 8 0	2 8 0
15 „ 20 . . .	0 8 0	1 0 0	2 0 0	3 8 0
20 „ 25 . . .	0 12 0	1 0 0	2 8 0	4 4 0
25 „ 30 . . .	1 0 0	1 0 0	3 0 0	5 0 0
30 „ 35 . . .	1 0 0	1 0 0	3 8 0	5 8 0
35 „ 40 . . .	1 0 0	1 8 0	4 0 0	6 8
40 „ 45 . . .	1 4 0	2 0 0	4 8 0	7 12
45 „ 50 . . .	1 8 0	2 0 0	5 0 0	8 8
50 „ 60 . . .	2 0 0	2 0 0	6 0 0	10 0
60 „ 80 . . .	2 8 0	2 8 0	6 8 0	11 8
80 to 100 . . .	3 0 0	3 0 0	7 0 0	13 0
Upwards of 100 . . .	3 0 0	3 0 0	7 per centum	...

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim and witnesses have to be subpœnaed, in which case each subpœna for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE FOURTH SCHEDULE.

(*See section 72.*)

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

THE PUNJAB UNIVERSITY ACT, 1882.

CONTENTS.

PREAMBLE.

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THE SCHEDULE.

PART I.—[*Repealed.*]

PART II.—PERSONS TO BE DEEMED TO HAVE BEEN APPOINTED FELLOWS UNDER SECTION 6, CLAUSE (*b*) OR (*c*).

ACT No. XIX OF 1882.[1]

[*5th October 1882.*]

An Act to establish and incorporate the University of the Punjab.

Preamble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Punjab University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of the vernacular languages of the Punjab, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the vernacular, the English language should be regarded as the medium of examination and instruction;

And whereas this Institution was, by a Notification, No. 472, dated 8th December 1869, published in the Punjab Government Gazette of the twenty-third day of December 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles and influential classes of the Punjab, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles and influential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science and Art, and for the purpose of conferring upon them academical degrees, diplomas, Oriental literary titles, licenses and marks of honour;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immoveable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied;

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 869; for Proceedings in Council, *see ibid*, Supplement, pp. 853, 903 and 1325.

The Indian Universities Act, 1904 (VIII of 1904), shall be deemed to be part of this Act: *see* Act VIII of 1904, s. 2 (*1*), General Acts, Vol. VI.

It is hereby enacted as follows :—

Short title and commencement.

1. This Act may be called the Punjab University Act, 1882 ; and it shall come into force at once.

Establishment and incorporation of University.

2. (*1*) A University shall be established at Lahore; and the Governor General for the time being shall be the Patron of the University.

(*2*) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(*3*) The University shall be a Body Corporate by the name of the University of the Punjab, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

(*4*)[1] The University shall come into existence on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

Property of Punjab University College to vest in University.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Punjab University College, shall, on that date, become the property of the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

Chancellor.

4. The Lieutenant-Governor of the Punjab for the time being shall be the Chancellor of the University ; and the first Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

Vice-Chancellor.

5. (*1*) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(*2*) Except as provided in sub-section (*4*), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(*3*) But, if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(*4*) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Punjab, shall be deemed to have been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (*3*), expire on the last day of December 1884.

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[1] The University came into existence on the 14th October 1882, *see* Notification No. 383-S. Punjab Gazette, 1882, Pt. I, p. 485.

6. [1] [*Fellows.*] *Repealed by the Indian Universities Act, 1904 (VIII of 1904).*

First Fellows.

7. [2] * * * * * * * * * * * *

(*2*) the persons named in Part II of that schedule shall, except for the purposes of the second clause of the proviso to section 6, be deemed to have been appointed Fellows under clause (*b*) or (*c*) of section 6.

Cancellation and vacation of appointment of Fellow.

8. (*1*) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow.[3] * * * * * * * * * *

(*2*) If any Fellow [4] * * * * * * * * * * leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

Constitution and powers of Senate.

9. (*1*) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University.

(*2*) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the statutes, rules and regulations for the time being in force [5] * * *

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[1] Section 6 was as follows :—The following persons shall be Fellows, namely :—

(*a*) every person who has held the office of Chancellor, and all persons for the time being holding such offices under Government as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf ;

(*b*) persons whom the Chancellor may, from time to time, appoint by name as being eminent benefactors of the Punjab University, original promoters of the movement in favour of the establishment of the Punjab University College, or persons distinguished for attainments in Literature, Science or Art, or for zeal in the cause of education ;

(*c*) such persons (if any) as may, from time to time, be elected by the Senate of the University, and approved by the Chancellor ; and

(*d*) the representatives, for the time being with the Government of the Punjab, of such Chiefs (if any) of territories not comprised in British India as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf :

Provided that—

(*1*) the whole number of the Fellows holding office under clauses (*a*), (*b*) and (*c*), exclusive of the Vice-Chancellor, shall never be less than fifty, and

(*2*) the number of persons for the time being elected under clause (*c*) shall never exceed the number for the time being appointed under clause (*b*).

Explanation.—The succession to an office notified under clause (*a*) of a person selected under clause (*c*) or appointed under clause (*b*), does not affect his position for the purposes of the second clause of this proviso.

[2] Sub-section (*1*) was repealed by the Indian Universities Act, 1904 (VIII of 1904), s. 29, and Sch. II, General Acts, Vol. VI and the word "and" before sub-section (*2*) is omitted. The sub-section was as follows :—"(*1* The offices specified in Part I of the schedule hereto annexed shall be deemed to have been specified in a notification issued under section 6, clause (*a*) ;".

[3] The words "appointed under section 6, clause (*b*) or clause (*c*) ; and the Local Government may, whenever it thinks fit, by notification in the official Gazette, cancel or amend any notification issued under section 6, clause (*a*) or clause (*d*)," were repealed by Act VIII of 1904, s. 29, and Sch. II, *ibid.*

[4] The words "appointed under section 6, clause (*b*) or clause (*c*), and not being a person named in Part II of the Schedule to this Act" were repealed by the Indian Universities Act, 1904 (VII of 1904), s. 29, and Sch. II, General Acts, Vol. VI.

[5] The words "under this Act" were repealed by Act VIII of 1904, *ibid.*

10 and 11. [*Chairman at meeting of Senate. Proceedings at meetings of Senate.*] *Repealed by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.*

12. [1] * * * * * * * * * * * * Appointment of Syndicate Faculties, Examiner and Officers.

The first Registrar shall be Gottlieb William Leitner, Esquire, Master of Arts, Doctor of Laws, Barrister-at-law.

13 to 16. [*Functions of Syndicate.—Power to confer degrees, etc, after Examination.—Power to confer degrees on persons who have passed Examinations of the Punjab University College in 1882. Power to confer honorary degrees.*] *Repealed by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch II.*

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules or regulations for the time being in force under this Act. Power to levy fees.

18. [*Power to make statutes, rules and regulations.*] *Repealed by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.*

19. It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and with the statutes, rules and regulations for the time being in force under the same; and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and the said statutes, rules and regulations. Duty of Local Government to enforce Act, statutes, rules and regulations.

20. All appointments made under section 5, all appointments [1] * * cancelled under [1] * * * * section 8, all degrees, diplomas, Oriental literary titles or licenses conferred [1] * * * * *, and all statutes, rules and regulations made under section 18, shall be notified in the official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published. Notifications in certain cases.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as the Local Government may direct. Annual accounts.

22. [*Temporary provision as to statutes, rules and regulations.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

[1] This section, except the last paragraph was repealed by Act VIII of 1904 General Acts, Vol VI.

[2] The words "made or", "section six, clauses (*b*) and (*c*) and", and "under sections fourteen, fifteen and sixteen" were rep aled by the Indian Universties Act, 1904 (VIII of 1904), s. 29 and Sch. II, General Acts, Vol. VI.

THE SCHEDULE.

(*See section 7.*)

* * * * * *

PART II.

Person to be deemed to have been appointed Fellows under section 6, clause (*b*) or (*c*) :—

His Highness Mahárájá Ranbír Singh, of Jammú and Kashmír, G.C.S.I., C.I.E., Counsellor of the Empress of India ;

His Highness Mahárájá Rajindar Singh, of Patiála ;

His Highness Nawáb Sadík Muhammad Khán, of Baháwalpur, G.C.S.I. ;

His Highness Rájá Raghbír Singh, of Jhínd, G.C.S.I., C.I.E., Counsellor of the Empress of India ;

His Highness Rájá Híra Singh, of Nabhá, G.C.S.I. ;

His Highness Rájá Jagatjít Singh, of Kapúrthhala ;

Rájá Bije Sen, of Mandi ;

Nawáb Ibrahím Alí Khán, of Maler Kotla ;

Rájá Bikram Singh, of Farídkot ;

Nawáb Abdul Majid Khán ;

Sardár Ajít Singh, Atariwála ;

Rai Amín Chand, Sardár Bahádur ;

Malaz-ul-Ulma Sardár Atar Singh, C.I.E., of Bhadaur ;

Major-General Henry Prevost Babbage, Bengal Staff Corps, late Deputy Commissioner, Punjab ;

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[1] Part I in the schedule was repealed by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II, General Acts, Vol. VI. The Part was as follows :—

PART I.

Offices to be deemed to have been specified under section 6, clause (*a*) :—

The office of—

Judge of the Chief Court, Punjab ;
Financial Commissioner of the Punjab ;
Surgeon-General of the Punjab ;
Commissioner of Lahore ;
Commissioner of Delhi ;
Commissioner of Amritsar ;
Accountant-General of the Punjab ;
Director of Public Instruction, Punjab ;
Principal of the Lahore Government College ;
Principal of the Lahore Medical School ;
Inspector of Schools in the Punjab ;
Deputy Commissioner of Lahore ;
Deputy Commissioner of Delhi ;
Deputy Commissioner of Amritsar.

David Graham Barkley, Esquire, M.A., Bengal Civil Service, Barrister-at-law;

Deputy Surgeon-General Henry Walter Belew, C.S.I.;

Reverend Edward Bickersteth, M.A.;

Charles Boulnois, Esquire, Barrister-at-law, late Judge, Chief Court, Punjab;

Sardár Bikráma Singh, C.S.I., Ahluwália;

Arthur Brandreth, Esquire, Barrister-at-law, late of the Bengal Civil Service, and Judge, Chief Court, Punjab;

Surgeon-Major Thomas Edwin Burton Brown, M.D.;

John Scarlett Campbell, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Punjab;

Surgeon-Major William Center, M.D., M.A.;

Reverend Robert Clark, M.A.;

John Graham Cordery, Esquire, M.A., Bengal Civil Service;

The Hon'ble Henry Stuart Cunningham, M.A., Barrister-at-law, Judge of the High Court, Calcutta;

Surgeon-Major Alexander Morrison Dallas;

Mansel Longworth Dames, Esquire, Bengal Civil Service;

Sir Robert Henry Davis, K.C.S.I., C.I.E., late Lieutenant-Governor of the Punjab and its Dependencies;

Colonel William George Davis, C.S.I.;

Deputy Surgeon-General Annesley Charles Castriot DeRenzy, B.A.;

Sir Robert Eyles Egerton, K.C.S.I., C.I.E., Counsellor of the Empress, late Lieutenant-Governor of the Punjab and its Dependencies

Dennis Fitzpatrick, Esquire, B.A., Bengal Civil Service, Barrister-at-law;

Reverend C. W. Foreman, DD.;

The Right Reverend Thomas Valpy French, DD., Lord Bishop of Lahore.;

Munshi Ghulám Nabi;

Surgeon-Major Robert Gray, M.B.;

Major Leopold John Henry Gray, C.S.I., Bengal Staff Corps;

Sir Lepel Henry Griffin, K.C.S.I., Bengal Civil Service;

Pandit Guru Parshád;

Sayyad Hádí Husain Khan;

Rájá Harbans Singh;

Kaur Harnám Singh, Ahluwália;

Doctor Thomas Hastings, late Deputy Inspector-General of Hospitals;

Edward Piercy Henderson, Esquire, Bengal Civil Service, Barrister-at-law;

Surgeon-Major George Henderson, M.D.;

Mír Hidayat Alí, Khán Bahádur;

Lieutenant-Colonel William Rice Morland Holroyd;

Reverend W. Hooper, M.A.;

Reverend T. P. Hughes, B.D.;
Munshí Hukm Chand;
Sodhí Hukm Singh;
Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service;
Rájá Jahándád Khán, Khán Bahádur, Ghakkar;
Aghá Kalbabíd;
Fakír Sayyad Kamr-ud-din;
Rai Bahádur Kanhya Lál, C.E.;
Khán Bahádur Khán Muhammad Sháh;
Bábá Khem Singh, C.I.E., Bedi;
John Lockwood Kipling, Esquire;
Surgeon Edward Lawrie, M.D.;
Gottlieb William Leitner, Esquire, M.A., LL.D.;
Thomas Crampton Lewis, Esquire, M.A.;
Charles Robert Lindsay, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Punjab;
James Broadwood Lyall, Esquire, Bengal Civil Service;
General Robert Maclagan, R.E., late Secretary to Government, Punjab, Public Works Department;
Colonel Charles Alexander McMahon;
The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore;
Colonel Julius George Medley, R.E.;
Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil Service and Governor General's Agent, Baroda;
John Andrew Erasmus Miller, Esquire;
Pandit Motí Lál, Káthju;
Khán Bahádur Muhammad Barkat Alí Khán;
Khalífa Sayyad Muhammad Hussain;
Muhammad Hyat Khán, C.S.I.;
Rai Múl Singh;
Nasir Alí Khan, Kazilbásh;
Bábú Navina Chandrá Rai;
Nawáb Nawázish Alí Khán;
Major Edward Newbery;
Edward O'Brien, Esquire, Bengal Civil Service;
Henry Edmund Perkins, Esquire, Bengal Civil Service;
Henry Meredith Plowden, Esquire, B.A., Barrister-at-law;
Major-General Charles Pollard, R.E.;
Baden Henry Baden-Powell, Esquire, Bengal Civil Service;
Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service, and Settlement Commissioner, Punjab;
Honorary Surgeon Rahím Khán, Khán Bahádur;
Diwán Rám Náth;

William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-law ;
Pandit Rikhi Kesh ;
Rájá Sir Sáhib Dyal, K.C.S.I. ;
Rai Bahádur Sáhib Singh ;
Leslie Seymour Saunders, Esquire, Bengal Civil Service ;
Brigade-Surgeon John Barclay Scriven, late Civil Surgeon, Lahore ;
David Simson, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Punjab ;
John Sime, Esquire, B.A. ;
Surgeon-General Charles Manners Smith, late of the Indian Medical Service ;
John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-law ;
Charles Henry Spitta, Esquire, LL.B., Barrister-at-law ;
Thomas Henry Thornton, Esquire, D.C.L., C.S.I., late of the Bengal Civil Service, and Judge, Chief Court, Punjab ;
Thomas William Hooper Tolbort, Esquire, Bengal Civil Service, Barrister-at-law ;
Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service ;
Major Isaac Peatt Westmoreland, R.E. ;
Lieutenant-Colonel George Gordon Young ;
William Mackworth Young, Esquire, M.A., Bengal Civil Service ;
Moulvi Zia-ud-dín Khán.

ACT No. II OF 1883.[1]

[*26th January 1883.*]

An Act to amend the Elephants Preservation Act, 1879.

VI of 1879.

WHEREAS it is expedient to amend the Elephants Preservation Act, 1879, in manner hereinafter appearing ; It is hereby enacted as follows :— Preamble.

For section 4 of the said Act the following shall be substituted, namely :—

"4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government." Rights of Government with respect to certain elephants and tusks.

[1]Short title, The Elephants Preservation Act (1879) Amendment Act, 1883, *see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 941 ; for Proceedings in Council, *see ibid*, 1882, Supplement, p. 1333 ; *ibid*, 1883, Supplement, p. 116.

THE INDIAN MERCHANT SHIPPING ACT, 1883.

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ACT No. V OF 1883.[1]

[*23rd February*

An Act for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigation

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V. p. 170; for Report of the Select Committee, *see ibid*, 1882, Pt. V. p. 665; for further Report of the Select Committee, *see ibid*, 1883, Supplement, pp. 257; for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 221 and 279; *ibid*, 1883, Supplement, pp. 257 and 263.

into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of Merchant Shipping;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. Extent. Commencement.

1. (*1*) This Act may be called the Indian Merchant Shipping Act, 1883.

(*2*) It extends to the whole of British India;

(*3*) and it shall come into force on the first day of January 1884.

Repeal of enactments.

2. (*1*) The Indian Merchant Shipping Act, 1875, and Act XIII of 1878 (*an Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed. IV of 1875.

(2) But all * * [1] officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively * * [2] appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Definitions.

3. In this Act—

[3] "ship" includes every description of vessel used in navigation not propelled by oars; and

[4] "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Saving and provision as to powers for removal of master.

4. (*1*) Nothing in this Act shall affect the powers conferred by section 240 of the Merchant Shipping Act, 1854,[5] or by section 80 of Act I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty[6] jurisdiction in India. 17 & 18 Vict., c. 104.

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[1] The words "proceedings commenced" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), s. 2 (*1*) and Sch. I.

[2] The word "commenced" was repealed by the Repealing and Amending Act, 1891 (XII of 1891), s. 2 (*1*) and Sch. I.

[3] *Cf.* definition in s. 3 (*51*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[4] *Cf.* definition in s. 3 (*32*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[5] *See* now s. 472 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stat., Vol. II, by which this Act has been repealed.

[6] As to Courts having Admiralty jurisdiction in India, *see* the Colonial Courts of Admiralty (India) Act, 1891 (XVI of 1891), General Acts, Vol. IV.

(*2*) The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction at that port.

CHAPTER II.

INVESTIGATIONS INTO SHIPPING CASUALTIES.

Chapter not to apply to certain ships.

5. Nothing in this Chapter shall apply to any ship belonging to, or in the service of, Her Majesty or of the Government of India, or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government.

6. (*1*) Whenever any Magistrate, or any officer appointed by the Local Government in this behalf[1], receives credible information that—

(*a*) any ship has been lost, abandoned, stranded or materially damaged on or near the coasts of British India; or

(*b*) by reason of any casualty happening to, or on board of, any ship on or near those coasts, loss of life has ensued; or

(*c*) any ship has caused loss or material damage to any other ship on or near those coasts; or

(*d*) any such loss, abandonment, stranding, damage or casualty has happened elsewhere to, or on board of, any British ship, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing the information to the Local Government.

(*2*) In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master, or other person in charge of the ship, or (where two ships are concerned) in charge of each ship, at the time of the loss, abandonment, stranding, damage or casualty, and

in cases under clause (*d*), where the master of the ship concerned, or (except in the case of a loss) where the ship concerned, proceeds to any

[1] For notifications making such appointments under this section in—
Bombay . . . . . *see* Bom. R. and O.; Bombay Gazette, 1899, Pt. I, pp. 98, 1424, 1425;
Madras . . . . . *see* Mad. R. and O.;
Bengal . . . . . *see* Ben. R. and O.;
Burma . . . . . *see* Burma Gazette, 1906, Pt. I, p. 791.

place in British India from the place where the loss, abandonment, stranding, damage or casualty has occurred, the master of the ship,

shall, on arriving in British India, give immediate notice of the loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port in British India, to the officer appointed as aforesaid at that port.

(*3*) Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, [1][with simple imprisonment] for a term which may extend to three months.

(*4*) [2] The Magistrate or other officer whose duty it is under sub-section (*1*) to report to the Local Government such information as is referred to in that sub-section shall be deemed to be a public servant, and shall have all the powers which an inspector appointed under section 14 of the Merchant Shipping Act, 1854,[3] has under clauses (1) to (5) of section 15 of that Act, that is to say :—

(i) he may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage; 17 & 18 Vict., c. 104.

(ii) he may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make;

(iii) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make;

(iv) he may require and enforce the production of all books, papers or documents which he considers important for such purpose;

(v) he may administer oaths, or may, in lieu of requiring or administering an oath, require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

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[1] Substituted for the words "to simple imprisonment" by the Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] Sub-sec. (*4*) was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 9, General Acts, Vol. IV.

[3] *See* now s. 728 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which this Act has been repealed, Coll. Stat., Vol. II.

[1](5) The word "coasts" in this section includes the coasts of creeks and tidal rivers.

Power for Local Government to appoint Special Court of investigation.

7. [2][(1) If the Local Government to which the report prescribed by the last foregoing section has been made or within whose territories any competent witnesses of any such loss, abandonment, stranding, damage or casualty as is described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) of the same section have arrived or are to be found or any evidence of such supposed loss as is described in clause (*e*) of the same sub-section can be obtained, is of opinion that a formal investigation into the facts mentioned in any of the said clauses is requisite or expedient, such Local Government may appoint a special Court[3], consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same.]

(*2*) One of the members of the Court shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

Power for other Courts to hold investigations into casualties when so directed.

8. Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government [4][or by such officer as the Local Government has empowered in this behalf], to make the [5]investigations referred to in section 7.

Power for Court of Investigation to inquire into charges against masters, mates and engineers.

9. (*1*) Any Court making an investigation under section 7 or section 8 may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

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[1] Sub-sec. (*5*) was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891) s. 9, General Acts, Vol. IV.

[2] Sub-sec. (*1*) of this section was substituted for the original by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 10, *ibid.*

The original sub-section ran as follows:—

"If in any such case a formal investigation into the facts mentioned in section 6, clause (*a*), (*b*), (*c*), (*d*) or (*e*), appeas to the Local Government to be requisite or expedient, the Local Government (whether the notice is given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same."

[3] For rules for the guidance of such Courts in Burma, *see* Burma Gazette, 1908, Pt. 1, p 193.

[4] These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 11, *ibid.*

[5] For notification authorizing the Political Resident, Aden, to direct the Principal Court at Aden to make investigations into shipping casualties, *see* Bom. R. and O.

(*2*) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

Power for Local Government to direct investigation into charges of incompetency or misconduct.

10. (*1*) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, holding a certificate granted by the Board of Trade or a Local Government, with incompetency or misconduct, otherwise than in the course of an investigation under section 7 or section 8, it may transmit a statement of the case to any Court mentioned in section 8, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an investigation into that charge.

(*2*) Before commencing the investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

Person accused to be heard.

11. For the purpose of an investigation under this Chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Powers of Courts as to evidence and regulation of proceedings.

12. For the purpose of any investigation under this Chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(*a*) if the Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(*b*) if the Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by that Court in the exercise of its admiralty or criminal jurisdiction (as the case may be).

Assessors.

13. (*1*) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the investigation shall constitute as its assessors for the purpose of the investigation two persons having experience in the merchant service; and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor for the purposes of

the investigation any person conversant with maritime affairs and willing to act as its assessor.

(*2*) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

Power to arrest witnesses and cause entry and detention of vessels.

14. (*1*) If any Court making an investigation under this Chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(*2*) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.[1]

XLV of 1860.

(*3*) No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial and bind over witnesses.

15. (*1*) Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate.

[2]* * * * * * * * * * * *

Depositions.

16. (*1*) Whenever, in the course of any such trial, the testimony of any witness is required in relation of the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

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[1] General Acts, Vol. I.

[2] Sub-section (*2*) was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II.

(*b*) that it was made in the presence of the person accused and that he had an opportunity of cross-examining the witness.

(*2*) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

Report by Court to Local Government.

17. (*1*) The Court shall, in the case of all investigations under this Chapter transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

(*2*) In cases in which, under the Merchant Shipping Acts, 1854 to 1882,[1] the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

Suspension and Cancellation of Certificates and Grant of fresh Certificates.

Saving of power to cancel and suspend certificates under English Acts.

18. Nothing in this Act shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1882,[1] on the Courts conducting investigations under sections 7, 8, 9, and 10 of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.[1] 32 & 33 Vict., c. 11.

Power to issue local certificates in lieu of cancelled or suspended certificates.

[2]**19.** (*1*) When any such Court cancels or suspends any such certificate, the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be, of a grade lower than that which he held at the time of the cancellation or suspension.

(*2*) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate

[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Act have since been repealed, Coll. Stat. V. L.
See now the Mercant Shipping (Colonial) Order in Council, 1891.

granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,[1] or of any Order in Council under that Act.

32 & 33 Vict., c. 11.

(*3*) The Local Government may act under this section either in pursuance of a recommendation from the Court, or of its own motion.

Power for Local Government to suspend or cancel certificates in certain cases.

20. Any certificate (whether of competency or service which has been granted by any Local Government to any master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,[1] or of any Order in Council under the said Act, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

32 & 33 Vict., c. 11.

[2] * * * * *

(*b*) if, on any investigation made under the Merchant Shipping Acts, 1854 to 1882,[1] or on any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that the master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(*c*) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony, and

(*d*) if (in case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854,[3] or by any other law for the time being in force,

17 & 18 Vict., c. 104.

* * * * * * *[4]

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have since been repealed.

[2] Cl. (*a*) to s. 20 was repealed by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 12, General Acts, Vol. IV.

[3] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which this Act has been repealed. Coll. Stat., Vol. II.

[4] The proviso to s. 20 was repealed by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 12, General Acts, Vol. IV.

(Chap. III.—Suspension and Cancellation of Certificates and Grant of fresh Certificates.)

Obligation to deliver up cancelled or suspended certificate.

21. Every master, mate or engineer whose certificate is cancelled or suspended under section 20 shall deliver it to the Shipping Master or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall for each offence be punished with fine which may extend to five hundred rupees.

Report to other Local Governments.

22. If the Local Government which cancels or suspends, under section 20, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate.

Report to Board of Trade.

23. Every Local Government cancelling or suspending under section 20 the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Power to revoke cancellation or suspension and grant new certificate.

24. (*1*) Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section 20, or grant without examination, to any person whose certificate it has so cancelled, a a new certificate of the same or of any lower grade.

(*2*) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,[1] or of any Order in Council under the said Act. 32 & 33 Vict., c. 11.

(*3*) A certificate of competency for a Home-trade-ship under Act I of 1859[2] shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign going ship under the same Act.

Power to Court to suspend or cancel certificates granted by Local Government.

24A.[3] (*1*) Notwithstanding anything in the foregoing provisions of this Act, a certificate (whether of competency or service) which has been granted by any Local Government to a master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,[1] or of any Order in Council under the said Act may, if a Court conducting an investigation under this Act finds that the loss, stranding or abandonment of or damage to any ship, or loss of life, has been caused by the wrongful act or default of the master, mate or engineer, or that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, be cancelled or suspended by the Court: 32 & 33, Vict., c. 11.

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which this Act has been repealed, Coll. Stat., Vol II.

[2] The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[3] S. 24A was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), S. 13, General Acts, Vol. IV.

Provided that the Court shall not cancel or suspend a certificate unless the holder of the certificate was furnished before the commencement of the investigation with the copy of the report or statement required by section 9 or section 10, as the case may be.

(*2*) At the conclusion of the investigation, or as soon afterwards as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancelment or suspension of any certificate.

(*3*) A master, mate or engineer whose certificate has been cancelled or suspended by the Court shall deliver the certificate to the Court, and the Court shall forward it to the Local Government, together with the report which it is required by section 17, sub-section (*1*), to transmit to that Government.

(*4*) A master, mate or engineer failing to deliver a certificate as required by sub-section (*3*) shall be punished with fine which may extend to five hundred rupees.

(5) The duties imposed and powers conferred by sections 22, 23 and 24 on the Local Government which cancels or suspends a certificate shall, when a Court has under this section cancelled or suspended a certificate, be performed and exercised by the Local Government to which the Court has forwarded the certificate under sub-section (*3*) as if such Local Government had itself cancelled or suspended the certificate under section 20.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

25. This Chapter shall be read with, and taken as part of, Act I of 1859.[1]

Chapter to be read with Act I of 1859.

26. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he engages in, and carries to sea from, any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements

27. (*1*) Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman

Form and contents of agreement.

[1] The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

signs the same, and shall contain the following particulars as terms thereof, that is to say :—

[1](*a*) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend ;

(*b*) the number and description of the crew, specifying how many are engaged as sailors ;

(*c*) the time at which each seaman is to be on board or to begin work ;

(*d*) the capacity in which each seaman is to serve ;

(*e*) the amount of wages which each seaman is to receive ;

(*f*) a scale of the provisions which are to be furnished to each seaman ; and

(*g*) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

(*2*) Every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

Scale of provisions to be furnished to lascars.

28. (*1*) In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be, from time to time, fixed and published by the Local Government with the previous sanction of the Governor General in Council.[2]

(*2*) Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

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[1]For notification under this section, modifying the first clause in the form of agreement signed by Indian seamen for foreign voyages, *see* Gazette of India, 1896, Pt. I, p. 146 ; for notification, *see* also Bombay Gazette, 1903, Pt. I, p. 401 ; for forms, *see* also Ben. R. and O.

[2] For notifications fixing such scale in the case of—

(1) Bengal . . . . . *see* Ben. R. and O.;
(2) Bombay . . . . . *see* Bom. R. and O.; Bombay Gazette, 1903, Pt. I., p. 1377 ;
(3) Burma . . . . . *see* Bur. R. M ; Burma Gazette, 1907, Pt. I, pp. 781,846.
(4) Madras . . . . . *see* Mad. R. and O.

Stipulation where lascars are shipped.

29. (*1*) Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section 27, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on ; or

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on.

(*2*) Every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

(*3*) In this section the word "seaman" shall include also any Native of British India carried to sea from any port in British India as one of the crew of a ship.

Forms for British or Colonial ships.

30. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which the ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, the seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

CHAPTER V.

HEALTH-OFFICERS.

31. [*Addition to Act XII of 1875.*]—*Rep. by the Indian Ports Act, 1889* (*X of 1889*), *s. 2 and Sch. II.*

CHAPTER VI.

MISCELLANEOUS.

Power to appoint persons to sue.

32. (*1*) Where any wages or expenses recoverable under section 213[1] of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the Gazette of India,

17 & 18 Vict., c. 104.
18 & 19 Vict., c. 91.

[1] *See* now ss. 186 & 193 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have been repealed. Coll. Stat., Vol. II.

authorize,[1] either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, those wages or expenses. 17 & 18 Vict., c. 104.

(*2*) Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872,[2] section 57, clause 7. I of 1872.

Proceedings to be instituted in name of Secretary of State for India in Council.

33. All suits and proceedings under section 32 shall be instituted and carried on in the name of the Secretary of State for India in Council.

Amendment of section 10 of Act I of 1859.

34. In section 10 of Act I of 1859,[3] for the words "Fees at the following rates shall be paid by all applicants for examination:—

For a certificate as master	. . .	ten rupees.
Ditto ditto as mate	. . .	five „

the following shall be substituted, namely:—"Fees at such rates as the Local Government[4] may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf shall be paid by all applicants for examination."

Addition to section 11 of Act I of 1859.

35. To section 11 of Act I of 1859[3] the following shall be added, namely:

"Provided that the Local Government may, in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character."

Amendment of section 79 of Act I of 1859.

36. For the last fifteen words of section 79 of Act I of 1859,[3] the following shall be substituted, namely:—"punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both."

Provisions as to examination, etc., of masters not to apply to certain ships.

37. Sections to 16 (both inclusive) of Act I of 1859[3] shall not apply to ships registered under Act X of 1841[5] and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen.

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[1]For notifications authorizing persons in—
Bombay . . . . . *see* Bom. R. and O.;
Burma . . . . . *see* Bur. R. M.; Burma Gazette, 1908, Pt. I. pp. 193, 194.

[2]General Acts, Vol. II.

[3]The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[4]For instance of notification under this section, *see* Mad. R. and O.

[5]The Indian Registration of Ships Act, 1841, General Acts, Vol. I.

38. In sections 2, 15, 17 and 23 of the said Act X of 1841,[1] for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur the following words shall be substituted, namely :—"on conviction before a Presidency Magistrate of the first class." Amendment of Act X of 1841, sections 2, 15, 17 & 23.

ACT No. XIX OF 1883.[2]

[*12th October 1883.*]

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.[3]

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows :—

1. (*1*) This Act may be called the Land Improvement Loans Act, 1883. Short title.

(*2*) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government, * * * * *[4] may, by notification in the local official Gazette, appoint in this behalf.[5] Local extent. Commencement.

XXVI of 1871.

2. (*1*) The Land Improvement Act, 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act, 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed. Acts XXVI of 1871 and XXI of 1876 repealed.

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[1]The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[2]For the Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 954; for Report of the Select Committee, *see ibid*, 1883, Supplement, p. 1296; for proceedings in Council, *see ibid*, 1882, Supplement, pp. 1494 and 1697; *ibid*, 1883, Supplement, p. 2071.

[3]Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—*see* The Indian Stamp Act, 1899, Sch. I, Art. 40, exemption (*1*), General Acts, Vol. V, and notification under s. 9, Gen. R. and O., and s. 2 (2) of this Act.

[4]The words "with the previous sanction of the Governor-General in Council" were repealed by s 2 of the Land Improvement and Agriculturists Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol. VI.

[5]Act XIX of 1883 came into force in—

The Lower Provinces of Bengal from 1st December 1884 . . .	*see*	Calcutta Gazette,	1884,	Pt.	I,	p. 1137.
The Punjab from 1st June 1885 .	„	Punjab „	1885,	„	I,	p. 378.
Lower Burma from 19th September 1885	„	Burma „	1885,	„	I,	p. 306.
The Central Provinces, *see* Notification of 9th February 1899 . . .	„	Central Provinces, „	1899,	„	III,	p. 30.
The Madras Presidency from 1st July 1886	„	Fort St. George „	1886,	„	I,	p. 547.
The Bombay Presidency (except Aden and Perim) from 1st April 1886 .		Bombay Govt. „	1886,	„	I,	p. 200.

(*2*) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

"Collector" defined.

3. In this Act, "Collector" means the Colleetor of land-revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or by virtue of his office to discharge the functions of a Collector [1] under this Act.

Purposes for which loans may be granted under this Act.

4. (*1*) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Local Government, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person.

(*2*) "Improvement" means any work which adds to the letting value of land, and includes the following, namely :—

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation ;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is culturable ;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and

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The Province of Agra, *see* N.-W. P. and Oudh Gazette, 1885, Pt. I, p. 529.

from 1st January 1886.				
Oudh from 1st January 1886.	„	Oudh	„	1885, „ I, p. 541.
Coorg from 1st January 1887.	„	Coorg District	„	1887, „ I, p. 658.
Assam from 1st June 1891.	„	Assam	„	1891, „ II, p. 193.

It has been extended by notification under section 5 of the Scheduled Districts Act, 1874 (XIV of 1874.) General Acts, Vol. II, to Ajmer-Merwara—*see* Gazette of India, 1886, Pt. II, p. 157.

It has been extended to the Angul District by notification under section 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code—*see* Calcutta Gazette, 1907, Pt. I., p. 2077.

It has been declared in force in—

the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), s. 3. as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, *see* the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

[1] *Cf.* s. 3 (*10*) of the General Clause Act, 1897 (X of 1897), General Acts, Vol. IV. For officer empowered in Sind *see* Bombay Gazette, 1901, Pt. I, p. 1094.

(*f*) such other works as the Local Government [1]* * * * * * * * may, from time to time, by notification in the local official Gazette, declare to be improvements for the purposes of this Act.

Mode of dealing with applications for loans.

5. (*1*) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Local Government[2] may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(*2*) The officer shall consider every objection submitted under sub-section (*1*), and make an order in writing either admitting or overruling it :

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

Period for repayment of loans.

6. (*1*) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments, [3] [from the date of the advance of the last instalment actually paid] as may from time, to times, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(*3*) The Local Government * * * *, in making * * * the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

Recovery of loans.

7. (*1*) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if

[1] The words "with the previous sanction of the Governor General in Council" were repealed by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), s. 2, General Acts, Vol. VI.

[2] For notification making such direction in—
Bombay . . *see* Bom. R. and O.
Burma . . *see* Burma Laws List, Ed. 1897, p. 175.

[3] These words were substituted for the words "from the date of the actual advance of the last instalment" by s. 2 of the Land Improvement Loans (Amendment) Act, 1899 (XVIII of 1899), General Acts, Vol. V, and are by that enactment to be deemded to have been substituted with effect from the commencement of Act XIX of 1883.

The words "and Governor General in Council" and the words "and sanctioning" were repealed by s. 3 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol. VI.

any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely :—

(*a*) from the borrower—as if they were arrears of land-revenue due by him ;

(*b*) from his surety (if any)—as if they were arrears of land-revenue due by him ;

(*c*) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land ;

(*d*) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land-revenue by the sale of immoveable property other than the land on which that revenue is due :

Provided that no proceeding in respect of any land under clause (*c*) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(*2*) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or recovered under sub-section (*1*) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (*1*).

(*3*) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

Order granting loan conclusive on certain points.

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

(*a*) that the work described is an improvement within the meaning of this Act ;

(*b*) that the person mentioned had at the date of the order a right to make such an improvement ; and

(*c*) that the improvement is one benefiting the land specified.

Liability of joint borrowers as among themselves.

9. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Power to make rules.

10. The Local Government, [1][subject to the control] of the Governor General in Council, may, from time to time, by notification in the local official Gazette, make rules[2] consistent with this Act to provide for the following matters, namely :—

(*a*) the manner of making applications for loans;

(*b*) the officers by whom loans may be granted;

(*c*) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries;

(*d*) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans;

(*e*) the inspection of works for which loans have been granted;

(*f*) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid;

(*g*) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same; and

(*h*) all other matters pertaining to the working of the Act.

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[1] Substituted for the words " with the previous sanction " by s. 4 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol VI.

[2] For notifications making such rules in—

(1) Ajmer-Merwara—*see* Aj. R. and O.; Gazette of India, 1908, Pt. II, p. 531;
(2) Assam—*see* Assam List of Local Rules and Orders, Ed. 1893, pp. 194 and 199;
(3) Bengal in conjunction with s. 11—*see* Ben. R. and O.; Calcutta Gazette, 1908, Pt. I, p.p. 546, 554;
(4) Bombay—*see* Bom. R. and O., and Bombay Government Gazette, 1900, Pt. I, p. 967, and *ibid*, p. 1898;
(5) Burma in conjunction with s. 11—*see* Burma Gazette, 1907, Pt. I, p. 1016;
(6) Central Provinces—*see* Central Provinces Gazette, 1908, Pt. I, p. 555;
(7) Coorg—*see* Coorg District Gazette, 1908, Pt. I, p. 464;
(8) Madras—*see* Mad. R. and O.;
(9) Punjab—*see* Punjab Gazette, 1901, Pt. I, p. 822;
(10) United Provinces and Oudh—*see* U. P. R. and O.

For rules made by the Government of Madras, combined with rules under s. 4 of the Agriculturists' Loans Act, 1884 (XII of 1884), *see* Fort St. George, 1897, Pt. I, p. 1332.

Exemption of improvements from assessment to land-revenue.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land:

Provided as follows:—

(*1*) where the improvement consists of the reclamation of waste-land, or irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules[1] to be framed by the Local Government

* * * * * * * * *[2]

(*2*) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

12. [*Amendment of Act III of 1877.*]—*Rep. by the Indian Registration Act, 1908, (XVI of 1908.)*

THE INDIAN EXPLOSIVES ACT, 1884.

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SECTIONS.

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[1] For such rules for—
(1) Ajmer-Merwara, *see* Aj. R. and O.;
(2) Bengal (in conjunction with s. 10), *see* Ben. R. and O.; Calcutta Gazette, 1908, Pt. I, pp. 546, 554;
(3) Burma (ditto) Burma Gazette, 1907, Pt. I, p. 1016;
(4) United Provinces of Agra and Oudh, U. P. R. and O.

[2] The words "with the approval of the Governor General in Council" were repealed by s. 5 of the Land Improvement and Agriculturists Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol. VI.

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12. Abetment and attempts.
13. Power to arrest without warrant persons committing dangerous offences.
14. Saving for manufacture, possession, use, sale, transport or importation, by Government.
15. Saving of Indian Arms Act, 1878.
16. Saving as to liability under other law.
17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

ACT No. IV OF 1884.[1]

[*26th February 1884.*]

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows :—

1. (*1*) This Act may be called the Indian Explosives Act, 1884 ; and Short title.

(2) It extends to the whole of British India. Local extent.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt. V, p. 22 ; for Proceedings in Council, *see ibid*, 1882, p. 1556, and *ibid*, 1883, Supplement, p. 43, and *ibid*, 1884, Supplement, p. 377.

This Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. I, to be in force in the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singbhum District of the Chota Nagpur Division—*see* Gazette of India, 1896, Pt. I, p. 972.

It has been applied to the Santhal Parganas under s. 3 of the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Laws Regulation, 1886 (III of 1886)—*see* Calcutta Gazette, 1891, Pt. I, p. 222. It has now been declared to be in force in the Santhal Parganas by s. 3 of Regulation III of 1872 as amended by s. 3 of Regulation III of 1899, Ben. Code.

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code. It had previously been extended there under s. 5 of Act XIV of 1874—*see* Gazette of India, 1888, Pt. I, p. 539, and was declared to come into force on 19th February 1889—*see* Bur. R. M.

For the law relating to explosive substances, *see* also the Explosive Substances Act, 1908 (VI of 1908), General Acts, Vol. VI.

Commencement.

2. This Act shall come into force on such day[1] as the Governor General in Council, by notification in the Gazette of India, appoints:

. . . . . .[2]

3. [*Repeal of portions of Act XII of 1875.*] *Repealed by Act X of 1889.*[3]

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "explosive"[4]

(*a*) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect;

(*b*) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined:

(*2*) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive:

(*3*) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise:

(*4*) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled:

(*5*) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship:

(*6*) "import" means to bring into British India by sea or land.

Power to make rules as to licensing of the manufacture, possession, use, sale, transport

5. (*1*) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules[5] consistent with this Act to regulate or prohibit, except under and in

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[1] The 1st July 1887—*see* Gazette of India, 1887, Pt. I, p. 307.

[2] Sub-sec. (*2*) was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] Repealed by the Indian Ports Act, 1908 (XV of 1908), General Act, Vol. VI.

[4] For a list of authorised explosives, *see* Gazette of India, 1905, Pt. II, p. 1112, *ibid*, 1908, Pt. II, p. 413.

[5] (1) For rules made by the Governor General in Council under this section and section 7 to regulate (*a*) the manufacture, possession and sale of explosives in British India, *see* Gazette of India, 1906, Pt. I, p. 827; and (*b*) the transport and importation of explosives, *see* Gen. R. and O., Vl. II, Gazette of India, 1907, Pt. I, p. 405; 1908, Pt. I, p. 593.

accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives. and importation of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

(*a*) the authority by which licenses may be granted ;

(*b*) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses ;[1]

(*c*) the manner in which applications for licenses must be made, and the matters to be specified in such applications ;

(*d*) the form in which, and the conditions on and subject to which, licenses must be granted ;

(*e*) the period for which licenses are to remain in force ; and

(*f*) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules :

For rules made with reference to rule 22 of the latter rules as to the test which certain explosives shall be required to pass before importation, *see* Gazette of India, 1907, Pt. I, p. 420.

(2) For rules as to the transport of explosives in—

(*a*) the Port of Bombay, *see* Bombay Government Gazette, 1898, Pt. I, p. 2009 ; *ibid*, 1901, p. 608.

(*b*) the Port of Aden, *see* Bom. R. and O. Bombay Government Gazette, 1901, Pt. I, p. 2525 ;

(*c*) the Port of Karachi, *see* Bombay Gazette, 1901, Pt. I, p. 1123 ;

(*d*) the Port of Madras, *see* Mad. R. and O. ;

(*e*) Bengal, supplementary to the rules by the Governor General in Council, *see* Ben. R. and O.; Calcutta Gazette, 1903, Pt. I, p. 1105.

(3) For rules to regulate the manufacture, possession and sale of explosives made under this section for—

(*a*) Assam, *see* Assam Rules Manual ;

(*b*) Bengal, *see* Calcutta Gazette, 1897, Pt. I, p. 1322 ; 1898, Pt. I, p. 1080 ; 1899, Pt. I, p. 1082 ; 1900, Pt. I, p. 691 ; 1901, Pt. I, pp. 375, 482 and 1006 ; 1902, Pt. I, p. 360 ; 1903, Pt. I, p. 651 ;

(*c*) Bombay, *see* Bombay Government Gazette, 1897, Pt. I, p. 1365 ; 1898, Pt. I, p. 1080 ; 1899, Pt. I, p. 1082 ; 1900, Pt. I, p. 691 ; 1901, Pt. I, pp. 375, 482 and 1006 ; 1902, Pt. I, p. 360 ; 1903, Pt. I, p. 651 ;

(*d*) Burma, *see* Bur. R. M.; Burma Gazette, 1902, Pt. I, p. 798, *ibid*, 1903, Pt. I, pp. 460 ; *ibid*, 1906, Pt. I, pp. 469, 709 ;

(*e*) Central Provinces, *see* Central Provinces Gazette, 1902, Pt. III, pp. 253 and 377 ;

(*f*) Coorg, *see* Coorg District Gazette, 1898, Pt. I, p. 84 ; 1899, Pt. I. pp. 64, 108 and 109, 1901, Pt. I, pp. 74 and 169 ; 1902, Pt. I, p. 75 ;

(*g*) Madras, *see* Mad. R. and O. ;

(*h*) United Provinces, *see* U. P. R. and O. ;

(*i*) Punjab, *see* Punjab Gazette, 1897, Pt. I, p. 303 ; 1899, Pt. I, p. 513; 1900, Pt. I, pp. 389 and 520 ; 1901, Pt. I, pp. 293, 570, 674 and 1018 ; 1902, Pt. I, pp. 66 and 422 ; 1903, Pt. I., p. 856.

As to how far these local rules are still in force, *see* Gazette of India, 1907, Pt. I, p. 405 ; *ibid*, 1906, Pt. I, p. 827.

[1] For notification declaring that no fee shall be charged for licenses to possess explosive in reasonable quantities for blastings, *see* Gazette of India, 1893, Pt. I, p. 211.

For notification as to fee to be charged under clause *(b)* in the Presidency of Bombay, *see* Bom. R. and O. ; in the Punjab, *see* Punj. R. and O.

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(*a*) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees :

(*b*) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees ;

(*c*) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees ; and

(*d*) in any other case, two hundred rupees.

Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.

6. (*1*) Notwithstanding anything in the rules under the last foregoing section, the Governor General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) [1]prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor General in Council, it is expedient for the public safety to issue the notification ; and

(*b*) cancel any notification under this section.

(*2*) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs[2] and the vessel containing the same ; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(*3*) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

Power to make rules conferring

7. (*1*) The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may make rules [3]

[1]For notification under this clause in respect of such acetylene as is declared to be an explosive (by Home Department Notification No. 1747, dated September 1st, 1899, Gazette of India, 1899, Pt. I., p. 747), *see* Gazette of India, 1900, Pt. I., p. 534.

[2]*See* Chapter IV of the Sea Customs Act, 1878 (VIII of 1878), General Acts, Vol. II.

[3]For rules appointing officers or giving power to appoint officers for the purposes of this section, *see* Gazette of India, 1897, Pt. I, p. 603.

For rules conferring certain powers on the Chief Inspector of Explosives with the Government of India, *see* Gazette of India, 1901 Pt. I, p. 1007 ; *ibid*, 1901, Pt. I, p. 152.

For rules made by the Lieutenant-Governor of Burma, *see* notes under section 5, *supra*.

For rules for Bombay, *see* Bom. R. and O.

For rules for Madras, *see* Mad. R. and O.

For rules for the United Provinces, *see* U. P. R. and O.

consistent with this Act authorizing any officer, either by name or in virtue of his office— powers of inspection, search, seizure, detention and removal.

(*a*) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act ;

(*b*) to search for explosives therein ;

(*c*) to take samples of any explosive found therein on payment of the value thereof ; and

(*d*) to seize, detain, remove and, if necessary, destroy any explosive found therein.

X of 1882. (*2*) The provisions of the Code of Criminal Procedure relating to searches[1] under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

Notice of accidents. **8.** Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in charge of the carriage, as the case may be, shall forthwith given notice thereof to the officer in charge of the nearest police-station.

Inquiry into accidents. **9.** (*1*) Whenever, in the opinion of a District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accidentof the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(*2*) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the[1] Code of Criminal Procedure.

X of 1882.

(*3*) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (*1*).

Forfeiture of explosives. **10.** When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted

[1] *See* now Act V of 1898, General Acts, Vol. V.

may direct that the explosive, or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

Distress of vessel.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Abetment and attempts.

12. Whoever abets, within the meaning of the Indian Penal Code,[1] the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence. XLV of 1860.

Power to arrest without warrant, persons committing dangerous offences.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port; or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Saving for manufacture, possession, use, sale, transport or importation by Government.

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(*a*) by order of the Government, or

(*b*) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869,[2] in the course of his employment or duty as such.

Saving of Indian Arms Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878:[2] XX of 1869.

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act[2]. XI of 1878. XI of 1878.

[1] General Acts, Vol. I.
[2] General Acts, Vol. II.

Saving as to liability under other law.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

Extension of definition of "explosive" to other explosive substances.

17. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act;[1] and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Procedure for making, publication and confirmation of rules.

18. (*1*) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India,[2] prescribes.

(*3*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*4*) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(*6*) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(*7*) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

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[1] Picric acid with certain exceptions has been declared to be an explosive within the meaning of this Act, *see* Gazette of India, 1905, Pt. I, p. 709. Liquid acetylene has also been declared to be an explosive within the meaning of the Act—see Gen. R. and O.; Gazette of India, 1899, Pt. I, p. 747; *ibid*, 1900, Pt. I, p. 809.

[2] For code prescribed, *see* Gen. R. and O.; Gazette of India, 1887, Pt. I, p. 448; for Upper Burma, *see* Bur. R. M.

THE INLAND STEAM-VESSELS ACT, 1884.

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ACT No. VI OF 1884.[1]

[*29th February 1884.*]

An Act to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels.

WHEREAS it is expedient to amend the law relating to the survey of inland steam-vessels and the examination and grant of certificates to engineers of those vessels;

And whereas it is also expedient to provide for the grant of certificates to the masters of inland steam-vessels and for investigations into casualties affecting, and into charges against masters and engineers of, those vessels, and for the protection of passengers and goods carried thereon from danger by fire, and for the regulation of the carriage of passengers therein;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Inland Steam-vessels Act, 1884. **Short title and extent.**

(*2*) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort St. George in Council.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt. V, p. 229; for Proceedings in Council, *see ibid.* Supplement, pp. 306 & 763, and *ibid*, 1884, Supplement, p. 390.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Lands Act, 1898 (XIII of 1898), s. 4 (*1*) and Sch. I, Bur. Code. It had previously been extended there under s. 5 of Act XIV of 1874, *see* notification printed, Gazette of India, 1888, Pt. I, p. 524.

(*3*) But the Governor of Fort St. George in Council may, at any time, by notification in the local official Gazette, extend this Act or any part thereof to the whole or any part of the territories under his administration.

Commencement.

2. (*1*) This Act shall come into force in the whole of British India, except the territories administered by the Governor of Fort St. George in Council, on such day[1] as the Governor General in Council, by notification in the Gazette of India, directs.

(*2*) If the Governor of Fort St. George in Council extends this Act or any part thereof to the whole or any part of the territories under his administration, the Act or part so extended shall come into force in the local area to which it is so extended on such day as the Governor in Council, by the notification extending the Act or part, directs:

(*3*) Provided that any notification, rule or appointment may be made under this Act at any time after the passing thereof, but, except in the case of a notification under section 69, sub-section (*2*), shall not take effect until the Act or part thereof, under which the notification, rule or appointment is made, comes into force.

Repeal of enactments.

3. (*1*) On and from the day on which this Act comes into force, elsewhere than in the territories administered by the Governor of Fort St. George in Council, the Acts mentioned in the first column of the first schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

(*2*) But all [2] * * investigations held, and certificates granted, cancelled or suspended under any of the said Acts shall be deemed to have been respectively[3] * * held, granted, cancelled or suspended under this Act or under the Indian Steamships Act, 1884,[4] as the case may be. VII of 1884.

(*3*) For the purposes of the last foregoing sub-section, a certificate granted to the commander of an inland steam-vessel under Bengal Act VII of 1879[5] (*to provide for the proper management of certain inland steam-vessels*) shall be deemed to be a first-class master's certificate granted under this Act; and an engineer's certificate, whether of competency or service, granted under any other of the Acts repealed by this Act shall be deemed to be an engineer's certificate granted under this Act or a first-class engineer's certificate granted under the Indian Steamships Act, 1884,[5] as the case may be. VII of 1884.

[1] Act VI of 1884 came into force in the whole of British India, except the territories administered by the Governor of Fort St. George in Council, on and from the 1st December 1885, *see* Gazette of India, 1885, Pt. I, p. 577.

[2] The words "proceedings commenced" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] The word "commenced" was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[4] *Infra.*

[5] Bengal Act VII of 1879 is repealed by this Act.

Reference to repealed Acts in other Acts, Regulations and notifications.

4. When in any Act, Regulation or notification passed or issued before this Act comes into force, reference is made to any Act repealed by this Act, the reference shall, so far as may be practicable, be read as applying to this Act or the Indian Steamships Act, 1884,[1] or the corresponding part of this Act or that Act, as the case may be.

VII of 1884.

Definitions.

5. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "vessel" includes anything made for the conveyance by water of human beings or of property :

(*2*) "steam-vessel" means every description of vessel propelled wholly or in part by the agency of steam :

[2][(*3*) "inland water" [3] means any canal, river, lake or navigable water in British India :]

(*4*) "inland steam-vessel" means a steam-vessel which ordinarily plies on inland water :

(*5*) "voyage" includes also the plying of a vessel at or about any place :

(*6*) "master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a vessel :

(*7*) "passenger" includes any person carried in a steam-vessel other than the master and crew and the owner, his family and servants : and

(*8*) "prescribed" means prescribed by a rule made by the Local Government under this Act.

CHAPTER II.[4]

SURVEY OF INLAND STEAM-VESSELS.

Inland steam-vessel not to proceed on voyage without a certificate of survey.

6. (*1*) An inland steam-vessel shall not proceed on any voyage unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed.

(*2*) Nothing in this section shall apply to any steam-vessel [5] proceeding on a voyage during the interval between the time at which her certificate under

[1] *Infra.*

[2] This clause was substituted for the original clause by the Indian Steamships Law Amendment Act, 1890 (III of 1890), s. 1, General Acts, Vol. IV. The original clause had "navigable lake or water" instead of "lake or navigable water"

[3] For power to define how much of any tidal water shall be deemed to be an "inland water," *see* s. 65, *infra.*

[4] For power to exempt vessels from the provisions of Ch. II or to modify that Chapter, *see* s. 64, *infra.*

[5] As to exemption of Government vessels, *see* s. 67, *infra.*

this Act expires and the time at which it is first practicable to have the certificate renewed.

Appointment of surveyors and places of survey.

7. (*1*) The Local Government may, from time to time, appoint so many persons as it thinks fit to be surveyors for the purposes of this Act at such places within the territories under its administration as it, from time to time, appoints to be places of survey.[1]

(*2*) Every surveyor appointed under this Act may be suspended or removed by the Local Government which appointed him.

(*3*) Every surveyor appointed under this Act shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian Penal Code.[2] XLV of 1860.

Powers of surveyors.

8. (*1*) For the purposes of a survey under this Act, any surveyor appointed under this Act may, at any reasonable time, go on board any inland steam-vessel, and may inspect the steam-vessel and every part thereof and the machinery, equipments or articles on board thereof:

Provided that he does not unnecessarily hinder the loading or unloading of the steam-vessel, or unnecessarily detain or delay her from proceeding on any voyage.

(*2*) The owner, master and officers of the steam-vessel shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-vessel, and her machinery and equipments, or any part thereof, respectively, as he reasonably requires.

Fees in respect of surveys.

8A.[3] Before a survey under this Act is commenced, the owner or master of the steam-vessel to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf—[4]

(*a*) a fee calculated on the tonnage of the steam-vessel according to the rates in the second schedule hereto annexed, or according to any other prescribed rates; and,

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[1] For notifications under this section in—
(*a*) the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1896, Pt. I, p. 1311; *ibid*, 1900, Pt. I, pp. 110, 1059, 1469, 1784, 2356; *ibid*, 1901, Pt. I, pp. 102, 825, 993, 1525, 1676, 2005; *ibid*, 1902, Pt. I, p. 636; Sind Gazette, 1899, Pt. I, p. 264.
(*b*) Burma, *see* Burma Gazette, 1904, Pt. I, p. 395; Bur. R. M.;
(*c*) Assam, *see* Assam Gazette, 1899, Pt. II, p. 372;
(*d*) Bengal, *see* Calcutta Gazette, 1900, Pt. I, p. 959; Ben. R. and O.;
(*e*) United Provinces of Agra and Oudh, *see* United Provinces Gazette, 1902, Pt. I, p. 478.

[2] General Acts, Vol. I.

[3] S. 8A was inserted by s. 2 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[4] For officers appointed at places to receive fees and surveyor's declarations and to deliver certificates of survey in—
(*a*) the Presidency of Bombay *see* Bom. R. and O., Bombay Gazette, 1896, Pt. I, p. 1311; Sind Gazette, 1899, Pt. I, p. 264;
(*b*) Burma, *see* Bur. R. M.;
(*c*) Bengal, *see* Ben. R. and O.

(*b*) when the survey is to be made in any place of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee in respect of the expense (if any) of the journey of the surveyor to the place as the Local Government, from time to time, by notification in the official Gazette, directs.

Declaration of surveyor.

9. When a survey under this Act is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the owner or master of the steam-vessel surveyed a declaration in the prescribed form containing the following particulars, namely :—

(*a*) that the hull and machinery of the steam-vessel are sufficient for the service intended and in good condition ;

(*b*) that the equipments of the steam-vessel and the certificates of the master and engineer or engine-driver are such and in such condition as are required by any law for the time being in force and applicable to the steam-vessel ;

(*c*) the time (if less than one year) for which the hull, machinery and equipments of the steam-vessel will be sufficient ;

(*d*) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-vessel is in the surveyor's judgment not fit to ply ;

(*e*) the number of passengers (if any) which the steam-vessel is in the judgment of the surveyor fit to carrry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins ; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances as the case requires ; and

(*f*) any other prescribed particulars.

Sending of declaration by owner or master to Local Government.

10. (*1*) The owner or master to whom a declaration is given under the last foregoing section shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government, from time to time, appoints in this behalf.[1]

(*2*) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(*3*) The owner or master shall pay the sum so forfeited on the delivery of the certificate of survey * * * [2].

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[1] For appointments made under this section and sections 11 and 14 in Bengal, *see* Ben. R. and O.

[2] The words "in addition to the fee payable for the certificate" were repealed by s. 3 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

Grant of certificate of survey by Local Government.

11. (*1*) Upon receipt of a declaration by the officer appointed [1] in this behalf under the last foregoing section, the Local Government shall, if satisfied that the provisions of this Act have been complied with, cause a certificate in duplicate to be prepared and delivered, through such officer at the place at which the steam-vessel was surveyed as the Local Government, from time to time, appoints in this behalf, to the owner or master of the steam-vessel surveyed, on his applying and paying the * * * * [2] sums (if any) in this Act mentioned as payable on delivery of a certificate.

(*2*) A certificate granted under this section shall be in such form as the Governor General in Council, from time to time, directs; shall contain a statement to the effect that the provisions of this Act with respect to the survey of the steam-vessel and the transmission of the declaration in respect thereof have been complied with; and shall set forth—

(*a*) the particulars concerning the steam-vessel which clauses (*c*), (*d*) and (*e*) of section 9 require the declaration by the surveyor to contain, and

(*b*) any other prescribed particulars.

(*3*) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-vessel to which the certificate relates.

[3](*4*) The Local Government may, from time to time, delegate,—

(*a*) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (*1*), of granting a certificate of survey under that sub-section;

(*b*) of its own authority to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (*3*), of causing notice to be given of a certificate of survey being ready for delivery:[4]

Provided, with respect to clause (*a*) of this sub-section, that no delegation

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[1] For notification appointing officers under this section to grant certificate of survey in—
(*a*) the Presidency of Bombay, *see* Bom. R. and O.;
(*b*) Burma, *see* Burma Gazette, 891, Pt I., p. 266; Bur. R. M.

[2] The words "fees and other" were repealed by s. 4 (*1*) of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[3] Sub-sec. (*4*) was added by s. 4 (*2*) of the Indian Steamships Law Amendment Act, 1890 (III of 1890).

[4] For list of officers to whom the powers conferred by this clause have been delegated in—
(*a*) the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1896, 1897, Pt. I, pp. 1311 and 35, respectively; Sind Gazette, 1899, Pt. I, p. 264;
(*b*) Burma, *see* Burma Gazette, Pt. I, p. 209; Bur. R. M.;
(*c*) Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Pt. II, p. 278.

of the function mentioned in that clause shall be construed to authorize the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 9.

12. [*Fees for certificates of survey.*] *Rep. by the Indian Steamships Law Amendment Act, 1890 (III of 1890), s. 5.*

Certificate of survey to be affixed in conspicuous part of steam-vessel.

13. The owner or master of every steam-vessel for which a certificate of survey has been granted under this Act shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as it remains in force and the steam-vessel is in use on some conspicuous part of the steam-vessel where it may be easily read by all persons on board thereof.

Term of certificates of survey.

14. A certificate of survey granted under this Act shall not be in force—

(*a*) after the expiration of one year from the date thereof; or

(*b*) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient; or

(*c*) after notice has been given by the Local Government, to the owner or master of the steam-vessel to which the certificate relates, that the Local Government has cancelled or suspended it.

Cancellation or suspension of certificate of survey by Local Government.

15. Any certificate of survey granted under this Act may be cancelled or suspended by a Local Government if it has reason to believe—

(*a*) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-vessel has been fraudulently or erroneously made; or

(*b*) that the certificate has otherwise been granted upon false or erroneous information; or

(*c*) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-vessel have sustained any injury, or have otherwise become insufficient.

Power to require delivery of expired or cancelled certificate.

16. The Local Government may require any certificate of survey which has expired or has been cancelled or suspended to be delivered up to such person as it, from time to time, directs.[1]

Report of cancellation.

17. If the Local Government which cancels or suspends a certificate of survey granted under this Act is not the Local Government which [2] [or whose

[1] For notification issued under this section as to certificates issued—
(*a*) at Karachi, *see* Bom. R. and O.; Sind Gazette, 1899, Pt. I, p. 264;
(*b*) in Burma, *see* Burma Gazette 1890, Pt. I, p. 65;
(*c*) Bombay, *see* Bombay Gazette, 1899, Pt. I, p. 1099.

[2] These words were inserted by s. 6 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

or suspension of certain certificates.

delegate] granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons therefor, to the Local Government which [1][or whose delegate] granted the certificate.

Power for Local Government to direct that two surveyors be employed.

18. A survey under this Act shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing,[2] so directs, either generally in the case of all steam-vessels at any place of survey, or specially, in the case of any particular steam-vessel or class of steam-vessels at any such place.

Power for Local Government to order a second survey.

19. (*1*) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration under section 9 with regard to any steam-vessel, or gives or give a declaration with which the owner or master of the steam-vessel surveyed is dissatisfied, the Local Government may, on the application of the owner or master [3] and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require,] direct two other surveyors appointed under this Act to survey the steam-vessel.

(*2*) The surveyors so directed shall forthwith survey the steam-vessel, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper; and their decision shall be final.

Division of duties when two surveyors employed.

20. When a survey is made under either of the last two foregoing sections by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Act or the rules made under this Act to a surveyor making a survey.

Power for Local Government to make rules as to surveys.

21. (*1*) The Local Government may make rules to regulate the making of surveys under this Act.

(*2*) Rules under this section may, among other matters,—

(*a*) declare the times and places at which, and the manner in which, surveys are to be made; [4]

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[1] These words were inserted by s. 6 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[2] For order issued by the Government of Bombay under this power as to inland vessels at Karachi, *see* Sind Gazette, 1899, p. 264.

For similar order issued for the whole of Burma, *see* Burma Gazette, 1891, Pt. I. p. 209, as regards Rangoon, *see ibid*, 1900, Pt. I, p. 381.

[3] These words were inserted by s. 7 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[4] For rules made under this clause for survey of inland steam-vessels in—

(*a*) Assam, *see* Assam Rules Manual, Ed. 1893, p. 217;

(*b*) Bombay for the port of Bombay and for the river Indus, *see* Bom. R. and O.; Bombay Gazette, 1896, Pt. I, p. 1504; Sind Gazette, 1899, Pt. I, p. 265;

(*c*) Burma, *see* Burma Gazette, 1891, Pt. I, p. 495;

(*d*) Bengal, *see* Calcutta Gazette, 1890, Appendix, pp. 1 to 24; *ibid*, 1899, Pt. I, p. 62; *ibid*, 1902, Pt. I, p. 337.

(Chapter III.—Masters (including Serangs) and Engineers (including Engine-drivers) of Inland Steam-vessels.)

(*b*) regulate the duties of the surveyor making a survey, and, where two surveyors are employed, assign the respective duties of each of the surveyors employed;

(*c*) declare the [1]form in which the declarations of surveyors and certificates of survey granted under this Act are to be framed, and the nature of the particulars which are to be stated therein, respectively;

(*d*) fix the rates according to which the fees payable [2][in respect of surveys] are to be calculated in the case of all or any of the places of survey within the territories under its administration; and

(*e*) define the cases in, and the extent to, which under ordinary circumstances a survey may be dispensed with before the grant of a new certificate.

CHAPTER III.[3]

MASTERS (INCLUDING SERANGS) AND ENGINEERS (INCLUDING ENGINE-DRIVERS) OF INLAND STEAM-VESSELS.

Appointment of examiners.

22. The Local Government may, from time to time, appoint persons [4] for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency as masters or serangs, or as engineers or engine-drivers, of inland steam-vessels.

Grant of masters' and serangs' certificates of competency.

23. (*1*) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as a first-class master, second-class master or serang, as the case may be, of an inland steam-vessel.

(*2*) Every certificate granted under this section shall be in the prescribed form.

Grant of engineers' and engine-driv-

24. (*1*) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of

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[1] For forms of certificates of survey and for granting declarations of survey, in the case of certain inland steam-vessels in Bengal, *see* Calcutta Gazette, 1897, Pt. I, pp. 1120 & 1123, respectively.

[2] These words were substituted for the words "for certificates of survey" by s. 8 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[3] Ch III was substituted for the original Chapter by s. 1 of the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891), General Acts, Vol. IV. For power to exempt vessels from the provisions of Ch. III, or to modify the Chapter, see s. 64. *infra*.

[4] For persons appointed examiners for engineers' or engine-drivers' certificates, *see* Bombay Gazette, 1904, Pt. I, p. 148, and for masters' or serangs' certificates in the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1902, Pt. I, p. 1030; Sind Gazette, 1899, Pt. I, p. 264.

ers' certificates of competency.

competency to the effect that he is competent to act as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, of an inland steam-vessel.

(*2*) Every certificate granted under this section shall be in the prescribed form.

Power for Local Government to require re-examination or further enquiry.

25. Before granting a certificate under either of the two last foregoing sections, the Local Government may, if it has reason to believe that the report of the examiners regarding any applicant has been unduly made, require a re-examination of the applicant or a further inquiry into his testimonials and character.

Grant of certificates of service.

25A. (*1*) The Local Government may in its discretion grant without examination to any person who has served as a master, or as an engineer, of an inland steam-vessel before the first day of April 1890, a certificate of service to the effect that he may act as a first-class master, second-class master or serang, or as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, of an inland steam-vessel.

(*2*) A certificate of service so granted shall have the same effect as a certificate of competency granted under this Act after examination.

Certificates to be made in duplicate.

26. Every certificate of competency or service granted under this Act shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

Copy of certificate to be granted in certain cases.

27. Whenever a master or serang, or an engineer or engine-driver, proves, to the satisfaction of the Local Government which granted his certificate, that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which, by the record kept as provided by law, he appears to be entitled shall be granted to him, and shall have all the effect of the original.

Nature of certificates necessary in case of different steam-vessels.

28. (*1*) An inland steam-vessel having engines of eighty nominal horse-power or upwards shall not proceed on any voyage unless she has—

(*a*) as her master a person possessing a first-class master's certificate granted under this Act or a master's certificate granted under Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) or the Merchant Shipping Acts, 1854 to 1889,[2] or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,[2] and

17 & 18 Vict., c. 104, &c.

32 & 33 Vict., c. 11.

[1] The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have been repealed, Coll. Stat., Vol. II.

(*b*) as her engineer a person possessing an engineer's certificate granted under this Act or the Indian Steam-ships Act, 1884,[1] or the Merchant Shipping Acts, 1854 to 1889, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.[2]

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(*2*) An inland steam-vessel having engines of thirty nominal horse-power or upwards but of less than eighty nominal horse-power shall not proceed on any voyage unless she has—

(*a*) as her master a person possessing a second class master's certificate granted under this Act or a certificate of the higher grade of the nature referred to in clause (*a*) of sub-section (*1*), and

(*b*) as her engineer a person possessing a first class engine-driver's certificate granted under this Act or an engine-driver's certificate granted under the Indian Steam-ships Act, 1884,[1] or a certificate of the higher grade of the nature referred to in clause (*b*) of sub-section (*1*) :

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Provided that a steam-vessel shall be deemed to have complied with this sub-section if she has as her master and engineer a person possessing both a second-class master's certificate and a first-class engine-driver's certificate granted under this Act, or in substitution for either of such certificates, as the case may be, a master's certificate or an engineer's certificate of the higher grade of the nature referred to in sub-section (*1*).

(*3*) An inland steam-vessel having engines of less than thirty nominal horse-power shall not proceed on any voyage unless she has—

(*a*) as her master a person possessing a serang's certificate granted under this Act or a certificate of the higher grade of the nature referred to in clause (*a*) of sub-section (*1*) or sub-section (*2*), and

(*b*) as her engineer a person possessing a second-class engine-driver's certificate granted under this Act or an engine-driver's certificate granted under the Indian Steam-ships Act, 1884,[1] or a certificate of the higher grade of the nature referred to in clause (*b*) of sub-section (*1*) or sub-section (*2*) :

VII of 1884.

Provided that a steam-vessel shall be deemed to have complied with this sub-section if she has as her master and engineer a person possessing both a serang's certificate and a second-class engine-driver's certificate granted

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[1] *Infra.*

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have been repealed, Coll. Stat., Vol. II.

under this Act, or, in substitution for either of such certificates, as the case may be, a master's certificate or an engineer's or engine-driver's certificate of the higher grade of the nature referred to in sub-section (*1*) or sub-section (*2*).

(*4*) Notwithstanding anything in sub-section (*1*), sub-section (*2*) or sub-section (*3*), the Local Government may, by general or special order, direct that a person possessing a master's certificate granted under Act I of 1859[1] (*for the amendment of the law relating to Merchant Seamen*) or the Merchant Shipping Acts, 1854 to 1889, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869[2], or possessing an engineer's certificate granted under the Indian Steam-ships Act, 1884[3], or the Merchant Shipping Acts, 1854 to 1889, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869[2], shall not act as master or engineer, as the case may be, of an inland steam-vessel unless he also possesses, in the case of a master,[4] such a master's or serang's certificate granted under this Act as qualifies him under this section to act as master of the vessel, or, in the case of an engineer, such an engineer's or engine-driver's certificate granted under this Act as qualifies him under this section to act as engineer of the vessel:

17 & 18 Vict., c. 104, &c. 32 & 33 Vict., c. 11. VII of 1884.

Provided that, for the purposes of this sub-section, the Local Government may, in its discretion, grant without examination a master's or serang's or an engineer's or engine-driver's certificate of competency under this Act, and that a certificate of competency so granted without examination shall have the same effect as a certificate of competency granted under this Act after examination[5].

Power for Local Government to make rules

29. (*1*) The Local Government may make rules[6] to regulate the granting of certificates of competency under this Act, and may by such rules—

(*a*) provide for the conduct of the examination of persons desirous of

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[1] The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have been repealed.

[3] *Infra.*

[4] For instance of a notification issued under this power, *see* Burma Gazette, 1891, Pt. I, p. 501.

[5] For notification issued under this power declaring persons qualified to act as engineers of inland steam-vessels at Karachi, *see* Bom. R. and O.; Sind Gazette, 1899, Pt. I, p. 265.

[6] For rules under the section as to the grant of certificates of competency and of service to masters and serangs, engineers and engine-drivers in the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1901, Pt. I, p. 2523; *ibid*, 1902, Pt. I, p. 1900; Sind Gazette, 1899, Pt. I, p. 273.

For rules under this section in—

Burma, *see* Bur. R. M.; Burma Gazette, 1899, Pt. I, p. 238; *ibid*, 1900, Pt. I, p. 785; *ibid*, 1902, Pt. I, p. 5.

Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Pt. I, p. 1118.

obtaining certificates of competency as masters or serangs, or as engineers or engine-drivers, under this Act; as to grant of certificates of competency and certificates of service.

(*b*) prescribe the qualifications to be respectively required of persons desirous of obtaining first-class masters' certificates, second-class masters' certificates, serangs' certificates, engineers' certificates, first-class engine-drivers' certificates and second-class engine-drivers' certificates, respectively;

(*c*) fix the fees to be paid by all applicants for examination; and

(*d*) prescribe the form in which certificates are to be framed, and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

(*2*) The Local Government may also make rules with respect to the grant of certificates of service under this Act, and may by such rules—

(*a*) fix the fees to be paid for such certificates, and

(*b*) prescribe the form in which such certificates are to be framed and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

[1]**29A.** Every certificate of competency or service granted under this Act shall have effect throughout British India. Certificates of competency or service to have effect throughout British India.

CHAPTER IV.

INVESTIGATIONS INTO CASUALTIES.

30. (*1*) Whenever

(*a*) any inland steam-vessel has been wrecked, abandoned or materially damaged, or, Report of casualties to be made to Local Government.

(*b*) by reason of any casualty happening to or on board of any inland steam-vessel, loss of life has ensued, or

(*c*) any inland steam-vessel has caused loss or material damage to any other vessel,

the master of the steam-vessel shall forthwith give notice of the wreck, abandonment, damage, casualty or loss to the officer in charge of the nearest police-station.

31. (*1*) If in any case a formal investigation into the facts referred to in the last foregoing section appears to the Local Government to be requisite or expedient, the Local Government may appoint a special Court [2] consisting Power for Local Government to appoint spe-

[1] S. 29A was added by s. 2 of the Inland Steam-vessels Act (1884) Amendment Act, 1899 (VII of 1899), General Acts, Vol. V.

[2] For rules for the guidance of such Courts in Burma, *see* Burma Gazette, 1908, Pt. I, p. 194.

cial Court of Investigation.

of not less than two nor more than four persons, and direct the Court to make the investigation, and may fix the place for making the same.

(*2*) One of the members of the Court shall be a Magistrate; another shall be some person conversant with maritime affairs or the navigation of inland steam-vessels; and the other or others (if any) shall be conversant with either maritime or mercantile affairs or with the navigation of inland steam-vessels.

Power for principal Court of ordinary criminal jurisdiction to hold investigations into casualties when so directed.

32. Any principal Court of ordinary criminal jurisdiction and the Court of any District Magistrate may, when so directed by the Local Government, make the investigation referred to in the last foregoing section.

Power for Court of Investigation to inquire into charges against masters, engineers and engine-drivers.

33. (*1*) Any Court making an investigation under either of the last two foregoing sections may inquire into any charge of incompetency or misconduct arising in the course of the investigation against any master, engineer or engine-driver, as well as into any charge of a wrongful act or default on his part causing any wreck, abandonment, damage, casualty or loss referred to in section 30.

(*2*) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default as aforesaid, arises against any master, engineer or engine-driver in the course of an investigation, the Court shall, before the commencement of the inquiry into the charge, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

Powers for Local Government to direct investigation into charges of incompetency or misconduct.

34. (*1*) If the Local Government has reason to believe that there are grounds for charging any master, engineer or engine-driver of an inland steam-vessel with incompetency or misconduct, otherwise than in the course of an investigation under section 31 or section 32, it may send a statement of the case to the principal Court of ordinary criminal jurisdiction, or the Court of the District Magistrate, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct the Court to make an investigation into the charge.

(*2*) Before commencing the investigation the Court shall cause the master or engineer or engine-driver so charged to be furnished with a copy of the statement sent by the Local Government.

Person accused to be heard.

35. For the purpose of an investigation under this Chapter into any charge against a master, engineer or engine-driver the Court may summon him to

appear, and shall give him full opportunity of making a defence, either in person or otherwise.

Assessors.

36. (*1*) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, engineer or engine-driver, the Court making the investigation shall constitute as its assessors, for the purposes of the investigation, two persons having experience in the merchant service or in the navigation of inland steam-vessels; and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs or the navigation of inland steam-vessels and willing to act as assessor.

(*2*) Every person appointed under this section shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act shall rest with the Court.

Powers of Court as to evidence and regulation of proceedings.

37. For the purpose of any investigation under this Chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(*a*) if the Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(*b*) if the Court is a principal Court of ordinary criminal jurisdiction or the Court of the District Magistrate—the same powers as are exerciseable respectively by either Court in the exercise of its criminal jurisdiction.

Power to arrest witnesses and cause entry and detention of vessels.

38. (*1*) If any Court making an investigation under this Chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(*2*) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code.[1]

XLV of 1860.

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[1] General Acts, Vol. I.

(*3*) No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial and bind over witnesses.

39. (*1*) Whenever in the course of any investigation it appears that any person has committed, within the jurisdiction of any Court in British India, an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may, from time to time, prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first-class or of a Presidency Magistrate.

[1]* * * * * *

Depositions.

40. (*1*) Whenever, in the course of any such trial, the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(*b*) that it was made in the presence of the person accused, and that he had an opportunity of cross-examining the witness.

(*2*) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

Report by Court to Local Government.

41. The Court shall, in the case of every investigation under this Chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

Power to investigate causes of explosions on board inland steam-vessels.

42. (*1*) Whenever any explosion occurs on board any inland steam-vessel, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit.

(*2*) The person or persons so directed may enter into and upon the steam-vessel, with all necessary workmen and labourers, and remove any portion of the steam-vessel or of the machinery thereof, for the purpose of the investiga-

[1] Sub-sec. (*2*) was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II. The sub-section was as follows:—

"For the purposes of this section the Recorder of Rangoon shall, within the local limits of the territories for the time being administered by the Chief Commissioner of British Burma, be deemed to be the High Court."

tion, and shall report to the Local Government what in his or their opinion was the cause of the explosion.

(*3*) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.[1]

XLV of 1860.

CHAPTER V.

SUSPENSION AND CANCELLATION OF MASTERS' AND ENGINEERS' CERTIFICATES.

Power for Local Government to suspend or cancel certificates in certain cases.

43. Any certificate granted under this Act to any master, engineer or engine-driver may be suspended or cancelled by the Local Government which granted it or by any other Local Government, in the following cases, that is to say :—

(*a*) if, on any investigation made under this Act, the Court reports that the wreck or abandonment of, or loss or damage to, any inland steam-vessel, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct; or

(*b*) if he is proved to have been convicted of any non-bailable offence; or

[2] [(*c*) if, in the case of a second-class master or serang, or of an engine-driver, the master or serang, or the engine-driver, is or has become, in the opinion of the Local Government, unfit to act as a second-class master or serang, or as an engine-driver, as the case may be :]

Provided that, in any case in which an investigation has been made into a charge against any master, engineer or engine-driver, a certificate shall not be suspended or cancelled under clause (*a*) of this section unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section 33 or section 34, as the case may be.

Obligation to deliver up cancelled or

44. Every master, engineer or engine-driver whose certificate is cancelled or suspended under the last foregoing section shall deliver it to

[1] General Acts, Vol. I.

[2] This clause was substituted for the original cl. (*c*) by s. 2 of the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891), General Acts, Vol. IV.

suspended certificate.

such person as the Local Government which cancelled or suspended it from time to time directs.[1]

Report to other Local Government.

45. If the Local Government which cancels or suspends a certificate under section 43 is not the Local Government which granted the certificate, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate.

Power to revoke cancellation or suspension and to grant new certificate.

46. (*1*) Any Local Government may, at any time, revoke any order of cancellation or suspension which it may have made under section 43, or grant, without examination, to any person whose certificate it has so cancelled, a new certificate.

(*2*) A certificate so granted shall have the same effect as if it had been granted after examination.

CHAPTER VI.

PROTECTION OF INLAND STEAM-VESSELS FROM DANGER BY FIRE [2][AND FROM COLLISION].

Power for Governor General in Council to declare dangerous goods. Carriage of dangerous goods.

47. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare what shall be deemed to be, for the purposes of this Act, dangerous goods.[3]

48. (*1*) A person shall not take with him on board an inland steam-vessel, and a person shall not deliver or tender for carriage on an inland steam-vessel, any dangerous goods without giving notice of their nature to the owner or master of the steam-vessel, or, in the case of goods delivered or tendered for carriage, without distinctly marking their nature on the outside of the package containing the goods.

(*2*) The owner or master of an inland steam-vessel may refuse to carry upon an inland steam-vessel any luggage or parcel which he suspects to contain dangerous goods, and may require the luggage or parcel to be opened to ascertain the fact previously to carrying the same; and, in case any such luggage or parcel is received for the purpose of being carried in any inland

[1] For officer appointed under this section for Bombay, *see* Bombay Gazette, 1899, Pt. I, p. 1099; Sind Gazette, 1899, Pt. I, pp. 265 569; for Karachi, *see* Bom. R. and O.; for Calcutta, *see* Ben. R. and O.; for Burma, *see* Burma Gazette, 1891, Pt. I, p. 455; Bur. R. M.

[2] Added by s. 3 of the Inland Steam-vessels Act (1884) Amendment Act, 1899 (VII of 1899), General Acts, Vol. V.

[3] For notification declaring certain articles to be dangerous goods, *see* Gazette of India, 1885, Pt. I, p. 578.

steam-vessel, the owner or master of the vessel may stop the transit thereof until he is satisfied as to the nature of its contents.

Power to throw overboard dangerous goods.

49. Where any dangerous goods have been sent or brought on board any inland steam-vessel in contravention of the last foregoing section, the owner or master of the steam-vessel may, if he thinks fit, cause the goods to be thrown overboard, together with any package or receptacle in which they are contained, and neither the owner nor the master shall, in respect of his having so thrown the goods overboard, be subject to any liability, civil or criminal, in any Court.

Power for Local Government to make rules for protection of inland steam-vessels from danger by explosion or fire.

50. (*1*) The Local Government may make rules for the protection of inland steam-vessels from danger by explosion or fire.[1]

(*2*) Rules under this section may provide for the following among other matters, that is to say :—

(*a*) the conditions on, and subject to, which dangerous goods may be carried on board inland steam-vessels ;

(*b*) the precautions to be taken to prevent explosions or fires on board inland steam-vessels ; and

(*c*) the apparatus for the purpose of extinguishing fires which is to be kept on board inland steam-vessels.

(*3*) Any rule under this section may contain a provision that any person committing a breach of it shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Power for Local Government to make rules for protection of inland steam-vessels from collision.

[2]**50A.** (*1*) The Local Government may make rules[3] for the protection of inland steam-vessels from collision.

(*2*) Rules under this section may regulate the following among other matters, that is to say :—

(*a*) the making of sound signals ;

(*b*) the carriage and exhibition of lights by inland steam-vessels ;

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[1] For rules for the protection of inland steam-vessels from danger by explosion from fire in—

(*a*) Assam, *see* Assam Rules Manual, Ed. 1893, pp. 227-230 ;
(*b*) Bengal, *see* Ben. R. and O. ; Calcutta Gazette, 1908, Pt. I, p. 1542 ;
(*c*) Bombay, *see* Bom. R. and O. ; Bombay Gazette, 1898, Pt. I, p. 1002 ;
(*d*) Burma, *see* Bur. R. M. ; Burma Gazette, 1905, Pt. I, pp. 499, 717 ; *ibid*, 1906, Pt. I, p 284.

[2] S. 50A was added by s. 4 of the Inland Steam-vessels Act (1884) Amendment Act, 1899 (VII of 1899). General Acts, Vol. V.

[3] For rules made by the Government of (1) Bengal, *see* Ben. R. and O. ; (2) Burma, *see* Bur. R. M. ; Burma Gazette, 1905, Pt. I, p. 344 ; *ibid*, 1906, Pt. I, p. 900, P. IV, p. 123 ; *ibid*, 1907, Pt. I, p. 861.

(*c*) the carriage and exhibition of lights by other vessels on inland waters on which steam-vessels ply and which are specified in the rules;

(*d*) the steering rules to be observed; and

(*e*) the towing of vessels astern or alongside.

(*3*) Any rule under this section may contain a provision that any person committing a breach of it shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VII.

CARRIAGE OF PASSENGERS IN INLAND STEAM-VESSELS.

Power for Local Government to make rules for the regulation of the carriage of passengers in inland steam-vessels.

51. (*1*) The Local Government may make rules[1] to regulate the carriage of passengers in inland steam-vessels.

(*2*) Rules under this section may provide for the following among other matters, that is to say:—

(*a*) the cases in which passengers may be refused admission to, or may be required to leave, inland steam-vessels;

(*b*) the payment of fares and the exhibition of tickets or receipts (if any) showing the payment of their fares by passengers in inland steam-vessels; and

(*c*) the regulation generally of the conduct of passengers in inland steam-vessels.

(*3*) Any rule under this section may contain a provision that any person committing a breach of it shall be punished with fine which may extend to twenty rupees.

(*4*) The master or any other officer of an inland steam-vessel, and any person called by him to his assistance, may arrest any person who has committed a breach of any rule made under this section, and whose name and address are unknown to the master or other officer.

(*5*) The procedure prescribed by section 59 of the Code of Criminal Procedure[2] in the case of arrest by private persons shall apply to every arrest under this section. X of 1882.

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[1] For rules made for the carriage of passengers in such vessels in—
(*a*) Bengal, *see* Calcutta Gazette 1908, Pt. I. p. 1542;
(*b*) Burma, *see* Bur. R. M., Burma Gazette, 1906, Pt. I., p. 133;
(*c*) Bombay, *see* Bom. R. and O.;
(*d*) E. B. and Assam, *see* E. B. and A. Gazette, 1908, Pt. I., p. 2010.

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

Power for Local Government to make rules for protection of passengers.

[1] **51A.** (*1*) The Local Government may also make[2] rules for the protection of passengers in inland steam-vessels, and may by such rules require, among other matters, a sufficient quantity of fresh water to be provided free of charge in such vessels for the use of passengers, and the prices of passenger-tickets to be printed or otherwise denoted on such tickets.

(*2*) Any rule under this section may contain a provision that any owner, master or passenger committing a breach of it shall be punished with fine which may extend to fifty rupees.

CHAPTER VIII.

PENALTIES AND LEGAL PROCEEDINGS.

Penalty for inland steam-vessel making a voyage without certificate of survey.

52. (*1*) If any inland steam-vessel proceeds on a voyage in contravention of section 6, the owner and master of the steam-vessel shall each be liable to a fine which may extend to one thousand rupees.

(*2*) If the master or any other officer on board of an inland steam-vessel which proceeds on a voyage in contravention of section 6 is a licensed pilot, he shall be liable to have his license as a pilot cancelled, or suspended for any period, by the Local Government, as the Local Government sees fit to order.

Penalty for neglect to affix certificate of survey in inland steam-vessel.

53. If the certificate of survey granted under this Act is not kept affixed in an inland steam-vessel in the manner provided by this Act,[3] the owner and master of the steam-vessel shall each be liable to a fine which may extend to one hundred rupees.

Penalty for neglect or refusal to deliver up certificate of survey.

54. If the owner or master of an inland steam-vessel, without reasonable cause, neglects or refuses to deliver up a certificate of survey when required under this Act[4] to do so, he shall be punished with fine which may extend to one hundred rupees.

Penalty for having excessive number of passengers on board.

[5] **54A.** If an inland steam-vessel has on board thereof or on or in any part thereof a number of passengers which is greater than the number of passengers set forth in the certificate of survey as the number which the vessel or the

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[1] S. 51A was added by s. 12 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[2] For rules made for the protection of passengers in such vessels in—
(*a*) Burma, *see* Bur. R. M.; Burma Gazette, 1906, Pt. I, p. 845;
(*b*) Bombay, *see* Bom. R. and O.;
(*c*) Bengal, *see* Calcutta Gazette, 1907, Pt. I, p. 404;
(*d*) Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Pt. II, p. 200.

[3] *See* s. 13, *supra*.

[4] *See* s. 16, *supra*.

[5] S. 54A was inserted by s. 13 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

part thereof is, in the judgment of the surveyor, fit to carry, the owner and master shall, for every passenger over and above that number, be each liable to a fine which may extend to ten rupees.

Penalty for serving, or engaging a person to serve, as master, engineer or engine-driver without certificate.

55. (*a*) If any person who has been engaged to serve as master, engineer or engine-driver of an inland steam-vessel proceeds on any voyage in that steam-vessel as master, engineer or engine-driver, as the case may be, without being at the time entitled to, and possessed of, the certificate required under this Act, and

(*b*) if any person employs any person as a master, engineer or engine-driver of an inland steam-vessel without ascertaining that he is at the time entitled to, and possessed of, the master's, engineer's or engine-driver's certificate, as the case may be, required under this Act,

he shall be punished with fine which may extend to five hundred rupees.

Penalty for master failing to give notice of wreck or casualty.

56. If any master wilfully fails to give notice, as required by section 30, of any wreck, abandonment, damage, casualty or loss, he shall be punished with fine which may extend to five hundred rupees, and, in default of payment, [1][with simple imprisonment] for a term which may extend to three months.

Penalty for master, engineer or engine-driver failing to deliver up cancelled or suspended certificate.

57. If any master, engineer or engine-driver, whose certificate is cancelled or suspended under this Act, fails to deliver the certificate to such person as the Local Government which cancelled or suspended it directs, he shall be punished with fine which may extend to five hundred rupees.

Penalty for taking dangerous goods on board inland steam-vessel without notice.

58. If any person, in contravention of section 48, takes with him on board any inland steam-vessel any dangerous goods, or delivers or tenders any such goods for the purpose of being carried on any inland steam-vessel, he shall be punished with fine which may extend to two hundred rupees, and the goods shall be forfeited to Her Majesty.

Penalty for misconduct endangering inland steam-vessel or life or limb.

59. If any person employed or engaged in any capacity on board an inland steam-vessel, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness—

(*a*) does any act tending to the immediate wreck, destruction or material damage of the vessel, or tending immediately to endanger the life or limb of any person belonging to, or on board, the vessel, or

(*b*) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate wreck,

[1] These words were substituted for the words "to simple imprisonment" by Sch. II to the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

destruction or material damage, or for preserving any person belonging to, or on board of, the vessel from immediate danger to life or limb,

he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.

Distress of inland steam-vessel.

60. Where the owner or master of an inland steam-vessel is convicted of an offence under this Act or the rules made under this Act committed on board of, or in relation to, that steam-vessel, and sentenced to pay a fine, the Magistrate may, in addition to any other power he may have for the purpose of compelling payment of the fine, direct the amount thereof to be levied by distress and sale of the vessel and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Jurisdiction of Magistrates.

61. Except in the case of offences under rules made under section 51, no Magistrate shall try an offence under this Act, or the rules under it, unless he is a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the first class.

Place of trial.

62. If any person commits an offence against this Act or the rules made under this Act, he shall be triable for the offence in any place in which he may be found or which the Local Government, from time to time, by notification [1] in the official Gazette, directs in this behalf, or in any other place in which he might be tried under any other law for the time being in force.

Saving of prosecutions under other Acts.

63. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under this Act:

Provided that a person shall not be punished twice for the same offence.

CHAPTER IX.

SUPPLEMENTAL.

Power for Local Government to exempt certain in-

64. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of Chapters II and

[1] For notification issued by the Government of (1) Bengal, *see* Ben. R. and O.; (2) Burma, *see* Bur. R. M.

land steam-vessels from Chapters II and III.

III of this Act shall not apply in the case of any specified class of steam-vessels, or shall apply to them with such modifications as the Local Government prescribes.[1]

Power for Local Government to define tidal water.

65. The Local Government may, from time to time, by notification in the official Gazette, define how much of any tidal water shall be deemed to be an inland water for the purposes of this Act.[2]

Fees recoverable as fines.

66. All fees payable under this Act may be recovered as fines under this Act.

Exemption of Government vessels.

67. Nothing in this Act, or in any rule made under this Act, shall apply to any steam-vessel belonging to, or in the service of, Her Majesty or the Government of India.

Certificated masters of inland steam-vessels to be deemed pilots under Ports Act.

68. [1]Every master of an inland steam-vessel who possesses a master's certificate duly granted under this Act and then in force shall, in ports to which section 38 of the Indian Ports Act, 1875,[3] has been extended, be deemed, XII of 1875. for the purposes of that section, to be the pilot of the steam-vessel of which he is in charge.

(*2*) Nothing in this section shall be deemed to affect the provisions of Bombay Act I of 1863 [4] which require persons in charge of vessels passing through any of the channels or tidal channels at the mouths of the river Indus to pay fees for pilotage.

Application of Act to vessels propelled by electricity or mechanical power.

[5] **68A.** The provisions of this Act shall apply to vessels which ordinarily ply on inland waters and are propelled by electricity or other mechanical power, with such modifications as the Governor General in Council may prescribe for the purpose of adaptation.

Procedure for making, publication and confirmation of rules.

69. (*1*) A Local Government making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

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[1] (*1*) For notification exempting inland steam-vessels which do not ply for hire for passenger-traffic or such vessels as cannot carry more than 12 passengers from the provisions of Ch. II of the Act, in—
(*a*) Assam, *see* Assam Rules Manual, Ed. 1893, p. 217 ;
(*b*) Bombay, *see* Bom. R. and O.
(*2*) For notification declaring that Ch. III shall apply to steam-vessels plying on the river Indus, *see* Bom. R. and O.
(*3*) For notification by the Government of Burma declaring that Chapter II shall not apply to inland steam-vessels of certain classes, *see* Bur. R. M.
(*4*) For notifications by the Government of Bengal, *see* Ben. R. and O.

[2] For notification by the Government of Bombay under this section, *see* Bom. R. and O. for notification by the Government of Bengal, *see* Ben. R. and O. ; for notification by the Government of Burma, *see* Bur. R. M.

[3] *See* now s. 31 of the Indian Ports Act, 1908 (XV of 1908), General Acts, Vol. VI.

[4] Bom. Code.

[5] Inserted by s. 2 of the Indian Steamships Law Amendment Act, 1909 (I of 1909), General Acts, Vol. VI, Appendix.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.[1]

(3) There shall be published with the draft a notcie specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect until it has been sanctioned by the Governor General in Council and published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made and sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE FIRST SCHEDULE.

ACTS REPEALED.

(*See section 3.*)

(*a*) *Acts of the Governor General in Council.*

Number and year.	Subject or short title.	Extent of repeal.
XVI of 1871 . .	The Burmese Steamer Survey Act .	The whole.

(*b*) *Acts of the Governor of Bombay in Council.*

Number and year.	Subject or short title.	Extent of repeal.
II of 1864 . . .	To provide for the periodical survey of steam-vessels in the ports, harbours, rivers or waters of the Presidency of Bombay.	The whole, except section 15.
IV of 1873 . . .	To amend Bombay Act II of 1864, providing for the periodical survey of steam-vessels, and to provide for the examination of engineers of steam-vessels.	The whole.

[1] For notification issued under this clause, *see* Gazette of India, 1885, Pt. I, p. 578, and *ibid*, 1891, Pt. I. p. 425.

For notification prescribing the manner of publication of draft rules, for Upper Burma, *see* Bur. R. M.; for Eastern Bengal and Assam, *see* Gazette of India, 1907, Pt. I, p. 850.

(*The Second Schedule.—Rates of Fees.*)

THE FIRST SCHEDULE—*concluded.*

(*c*) *Acts of the Lieutenant-Governor of Bengal in Council.*

Number and year.	Subject or short title.	Extent of repeal.
V of 1862 . . .	To provide for the periodical survey of steam-vessels in the port of Calcutta.	The whole.
I of 1868 . . .	The Steam-boat Survey Amendment Act, 1868.	So much as has not been repealed.
III of 1871 . .	To increase the fees for the survey of steam-vessels.	The whole.
VII of 1879 . .	To provide for the proper management of certain inland steam-vessels.	The whole.

THE SECOND SCHEDULE.

RATES OF FEES.

(*See section 8A.*[1])

				Tons.	Rs.
For steam-vessels of less than				100	25
„	„	100 tons and up to		200	40
„	„	200 „	„ „	350	50
„	„	350 „	„ „	700	60
„	„	700 „	„ „	1,000	80
„	„	1,000 „	„ „	1,500	100
„	„	1,500 „	and upwards	...	120

THE INDIAN STEAMSHIPS ACT, 1884.

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[1] This reference was substituted for the reference to s. 12 by s. 14 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

CHAPTER II.

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THE SCHEDULE—RATES OF FEES.

ACT No. VII OF 1884.[1]

[*29th February 1884.*]

An Act to amend the law relating to the Survey of Steam-ships and the grant of Certificates to Engineers of those Ships.

WHEREAS it is expedient to amend the law relating to the survey of steam-ships and the grant of certificates [2] to engineers of those ships; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. Extent. Commencement.

1. (*1*) This Act may be called the Indian Steam-ships Act, 1884; and

(*2*) It extends to the whole of British India.

2. (*1*) This Act shall come into force on such day [3] as the Governor General in Council, by notification in the Gazette of India, appoints :

(*2*) [*Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).]

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt. V, p. 245; for Proceedings in Council, *see ibid*, Supplement, pp. 307 and 763, and *ibid*, 1884, Supplement, p. 392.

[2] As to validation of "Indian Foreign Trade Certificates of competency" granted in Bombay to engineers of steam-ships, *see* s. 2 of the Engineers' Certificates Validation Act, 1894 (XV of 1894), Bom. Code.

As to validation of certificates of competency granted under the authority of the Commissioner in Sind between 1st December 1885 and 3rd July 1900, to certify the competency of the grantees thereof to be engine-drivers of steam-ships, *see* the Indian Steam-ships (Amending and Validating) Act, 1902 (III of 1902), s. 4, General Acts, Vol. V.

[3] Act VII of 1884 came into force on the 1st December 1885, *see* Gazette of India, 1885, Pt. I, p. 577.

3. In this Act, unless there is something repugnant in the subject or context— **Definitions.**

(*1*) "steam-ship" means every description of vessel used in navigation and propelled wholly or in part by the agency of steam;

(2) "British steam-ship" includes a steam-ship registered under Act XIX of 1838,[1] Act X of 1841[2] or Act XI of 1850,[2] or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India;

(*3*) "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a steam-ship:

(*4*) "passenger" includes any person carried in a steam-ship other than the master and crew and the owner, his family and servants: and

(*5*) "prescribed" means prescribed by a rule made by the Local Government under this Act.

CHAPTER II.[3]

SURVEY OF STEAM-SHIPS.

4. No steam-ship shall carry more than twelve passengers between places in British India[4] or to or from any place in British India from or to any place out of British India, unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed. **No steam-ship to carry passengers without a certificate of survey.**

5. Nothing in the last foregoing section shall apply to— **Exception of certain steam-ships.**

(*a*) any steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government, unless it appears from the certificate that it is inapplicable to the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed, or unless there is reason to believe that the steam-ship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient; or

(*b*) any steam-ship having a certificate of survey granted under the Inland Steam-vessels Act, 1884,[5] in force and applicable to

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[1] Bom. Code.

[2] General Acts, Vol. I.

[3] For power to exempt steam-ships from Ch. II, or to modify the chapter, *see* s. 25, *infra*.

[4] Substituted for original section 4 by s. 3 of the Indian Steam-ships Law Amendment Act, 1909 (I of 1909), General Acts, Vol. VI. Appendix.

[5] *Supra*.

the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed; or

(*c*) any steam-ship belonging to, or in the service of, Her Majesty or the Government of India; or

(*d*) any steam-ship belonging to any foreign Prince or State when employed mainly on the public service of the Prince or State; or

(*e*) any steam-ship carrying passengers during the interval between the time at which her certificate of survey under this Act expires and the time at which it is first practicable to have the certificate renewed.

Penalty for carrying passengers without certificate of survey.

6. (*1*) If any steam-ship carries or attempts to carry passengers in contravention of section 4, the owner and master of the steam-ship shall each be liable to a fine which may extend to one thousand rupees.

(*2*) If the master or any other officer of any steam-ship which carries or attempts to carry passengers in contravention of section 4 is a licensed pilot, he shall be liable to have his license as a pilot cancelled or suspended for any period by the Local Government as the Local Government sees fit to order.

No port-clearance until certificate of survey produced.

7. No officer of Customs shall grant a port-clearance, nor shall any pilot be assigned, to any steam-ship for which a certificate of survey is required by section 4, until after the production by the owner or master thereof of a certificate under this Act in force and applicable to the voyage on which she is about to proceed and the service on which she is about to be employed.

Power to detain steam-ship not having certificate of survey.

8. If any steam-ship for which a certificate of survey is required by section 4 leaves or attempts to leave any port of survey without a certificate, any officer of Customs or any pilot on board the steam-ship may detain her until she obtains a certificate.

Appointment of surveyors and ports of survey.

9. (*1*) The Local Government may, from time to time, appoint so many persons as it thinks fit to by surveyors for the purposes of this Act at such ports within the territories under its administration as it, from time to time appoints to be ports of survey.[1]

(*2*) Every surveyor appointed under this Act may be suspended or removed by the Local Government which appointed him.

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[1] For ports of survey and surveyors for such ports appointed for the Presidency of Bombay, *see* Bom. R and O; for the port of Aden, *see* Bombay Gazette, 1878, Pt. I, p. 457; for the port of Karachi, *see* Sind Gazette, 1899, Pt. I, p. 113; for Burma, *see* Bur. R. and M.; Burma Gazette, 1904, Pt. I, p. 395.

(*3*) Every surveyor appointed under this Act shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian Penal Code.[1]

XLV of 1860.

Powers of surveyor.

10. (*1*) For the purposes of a survey under this Act, any surveyor appointed under this Act may, at any reasonable time, go on board a steam-ship and may inspect the steam-ship and every part thereof, and the machinery, equipments or articles on board thereof:

Provided that he does not unnecessarily hinder the loading or unloading of the steam-ship, or unnecessarily detain or delay her from proceeding on any voyage.

(*2*) The owner, master and officers of the steam-ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-ship and her machinery and equipments, or any part thereof, respectively, as he reasonably requires.

Fees in respect of surveys.

[2] **10A.** Before a survey under this Act is commenced, the owner or master of the steam-ship to be surveyed shall pay to such officer[3] as the Local Government, from time to time, appoints in this behalf—

(*a*) a fee calculated on the tonnage of the steam-ship according to the rates in the schedule hereto annexed or according to any other prescribed rates; and

(*b*) when the survey is to be made in any port of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port, as the Local Government, from time to time, by notification in the official Gazette, directs.

Declaration of surveyor.

11. When a survey under this Act is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the owner or master of the steam-ship surveyed a declaration in the prescribed form containing the following particulars, namely :—

(*a*) that the hull and machinery of the steam-ship are sufficient for the service intended and in good condition;

(*b*) that the equipments of the steam-ship and the certificates of the master, mate or mates, and engineer or engineers or engine-driver, are such and in such condition as are required by any law for the time being in force and applicable to the steam-ship;

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[1] General Acts, Vol. I.

[2] S. 10A was inserted by s. 15 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), General Acts, Vol IV.

[3] For officer appointed for Aden, *see* Bombay Gazette, 1904, Pt. I, p. 148; for Burma, *see* Bur. R. M.; for Calcutta, *see* Ben. R. and O.

(*c*) the time (if less than one year) for which the hull, machinery and equipments of the steam-ship will be sufficient;

(*d*) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-ship is in the surveyor's judgment not fit to ply;

(*e*) the number of passengers which the steam-ship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances, as the case requires; and

(*f*) any other prescribed particulars.

Sending of declaration by owner or master to Local Government.

12. (*1*) The owner or master to whom a declaration is given under the last foregoing section shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer[1] as the Local Government, from time to time, appoints in this behalf.

(*2*) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(*3*) The owner or master shall pay the sum so forfeited on the delivery of the certificate of survey * * * *.[2]

Grant of certificate of survey by Local Government.

13. (*1*) Upon receipt of a declaration by the officer appointed in this behalf under the last foregoing section, the Local Government shall, if satisfied that the provisions of this Act have been complied with, cause a certificate in duplicate to be prepared and delivered, through such officer[1] at the port at which the steam-ship was surveyed as the Local Government, from time to time, appoints in this behalf, to the owner or master of the steam-ship surveyed on his applying and paying the * * *[3] sums (if any) mentioned in this Act as payable on delivery of a certificate.

(*2*) A certificate granted under this section shall be in such form as the Governor General in Council, from time to time, directs; shall contain a statement to the effect that the provisions of this Act with respect to the survey of the steam-ship and the transmission of the declaration in respect thereof have been complied with; and shall set forth—

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[1] For officer appointed for Aden, *see* Bombay Gazette, 1904, Pt. I, p. 148; for Calcutta, *see* Ben. R. and O.

[2] The words "in addition to the fee payable for the certificate" were repealed by s. 16 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[3] The words "fees and other" were repealed by s. 17 (*1*) of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890).

(*a*) the particulars concerning the steam-ship which clauses (*c*), (*d*) and (*e*) of section 11 require the declaration by the surveyor to contain; and

(*b*) any other prescribed particulars.

(*3*) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-ship to which the certificate relates.

[1] (*4*) The Local Government may, from time to time, delegate,—

(*a*) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (*1*), of granting a certificate of survey under that sub-section;[2]

(*b*) of its own authority, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (*3*), of causing notice to be given of a certificate of survey being ready for delivery:[3]

Provided, with respect to clause (*a*) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorize the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 11.

14. [*Fees for certificates of survey.*] *Rep. by the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), s. 18.*[4]

Certificate of survey to be affixed in conspicuous part of steam-ship.

15. (*1*) The owner or master of every steam-ship for which a certificate of survey has been granted under this Act shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the steam-ship is in use, on some conspicuous part of the steam-ship where it may be easily read by all persons on board thereof.

(*2*) If the certificate is not so kept affixed, the owner and master of the steam-ship shall each be liable to a fine which may extend to one hundred rupees.

Term of certificate survey.

16. A certificate of survey granted under this Act shall not be in force—

(*a*) after the expiration of one year from the date thereof; or

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[1] Sub-sec. (*4*) was added to s. 13 by s. 17 (*2*) of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890) s. 17.

[2] For officers to whom the function of granting certificates under this section has been delegated in the Presidency of Bombay, *see* Bom. R. and O.; in Burma, *see* Bur. R. M.; in Eastern Bengal and Assam the power has been delegated to the Port Officer, Chittagong; *see* Eastern Bengal and Assam Gazette, 1908, Pt. II, p. 278.

[3] For officers to whom the functions conferred by this section have been delegated in the Presidency of Bombay, *see* Bom. R. and O.; in Burma, *see* Bur. R. M.

[4] General Acts, Vol. IV.

(*b*) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient; or

(*c*) after notice has been given, by the Local Government, to the owner or master of the steam-ship to which the certificate relates, that the Local Government has cancelled or suspended it.

Cancellation or suspension of certificate of survey by Local Government.

17. Any certificate of survey granted under this Act may be cancelled or suspended by the Local Government if it has reason to believe—

(*a*) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-ship has been fraudulently or erroneously made; or

(*b*) that the certificate has otherwise been issued upon false or erroneous information; or

(*c*) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-ship have sustained any injury, or have otherwise become insufficient.

Power to require delivery of expired or cancelled certificates of survey.

18. (*1*) The Local Government may require any certificate of survey granted under this Act which has expired, or has been cancelled or suspended, to be delivered up to such person[1] as it, from time to time, directs.

(*2*) If the owner or master of a steam-ship, without reasonable cause, neglects or refuses to deliver up a certificate as required under this section, he shall be punished with fine which may extend to one hundred rupees.

Report of cancellation or suspension of certain certificates.

19. If the Local Government which cancels or suspends a certificate of survey granted under this Act is not the Local Government which [2][or whose delegate] granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons therefor, to the Local Government which [2][or whose delegate] granted the certificate.

Power for Local Government to direct that two surveyors be employed.

20. A survey under this Act shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing,[3] so directs, either generally in the case of all steam-ships at any port of survey or specially in the case of any particular steam-ship or class of steam-ships at any such port.

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[1] For officer appointed under this section, (1) for Bombay, *see* Bombay Gazette, 1899, Pt. I, p. 1099; (2) for Aden, *ibid*, 1904, Pt. I, p. 148; (3) for Calcutta, *see* Ben. R and O.

For procedure in Burma for the delivery of certificates which have been cancelled, etc., *see* Bur. R. M.

[2] These words in s. 19 were inserted by s. 19 of the Indian Steam-ships Law Amendment 1890 (III of 1890), General Acts, Vol. IV.

[3] For orders by the Government of Burma, *see* Bur. R. M.

(*Chapter II.—Survey of Steam-ships.*)

Power for Local Government to order a second survey.

21. (*1*) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration under section 11 with regard to any steam-ship, or gives or give a declaration with which the owner or master of the steam-ship surveyed is dissatisfied, the Local Government may, on the application of the owner or master, [1][and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require,] direct two other surveyors appointed under this Act to survey the steam-ship.

(*2*) The surveyors so directed shall forthwith survey the steam-ship, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper; and their decision shall be final.

Division of duties when two surveyors employed.

22. When a survey is made under either of the last two foregoing sections by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Act or the rules made under this Act to a surveyor making a survey.

Survey of steam-ships.

[2] **23.** (*1*) When a steam-ship requires to be furnished with a certificate of survey under this Act, and the Local Government is satisfied, by the production of a certificate of survey attested by a British Consular Officer at the port where the survey was made, that the ship has been officially surveyed at a foreign port, and that the requirements of this Act are proved by that survey to have been substantially complied with, the Local Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Act:

Provided that this section shall not apply in the case of a foreign steam-ship to an official survey at any foreign port with respect to which His Majesty has by Order in Council directed that section 363[3] of the Merchant Shipping Act, 1894, shall not apply.

57 & 58 Vict., c. 60.

(*2*) When the Local Government has, by notification in the local official Gazette, declared that it is satisfied that an official survey at any foreign port specified in the declaration is such as to prove that the requirements of this Act have been substantially complied with, any person appointed by the Local Government, by name or as holding any office, may exercise the power to dispense with a survey and to give a certificate conferred on the Local Government by sub-section (*1*) in the case of any steam-ship furnished with a valid certificate of survey granted at such foreign port and duly attested by the British Consular Officer at that port.

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[1] Inserted by s. 20 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890).

[2] Substituted for the original section 23 by the Indian Steam-ships Law Amendment Act, 1909 (I of 1909), s. 4, General Acts, Vol. VI, Appendix.

(*3*) The procedure prescribed in sub-section (*1*) shall be applicable in the case of steam-ships furnished with valid certificates of partial survey including docking certificates, granted by the Board of Trade or any British Colonial Government, as if they were steam-ships furnished with like certificates of survey granted at foreign ports, subject to the modification that the powers of the Local Government under the said sub-section may be exercised by any person appointed by the Local Government, by name or as holding any office in this behalf."

Power for Local Government to make rules as to surveys.

24. (*1*) The Local Government may make rules[1] to regulate the making of surveys under this Act.

(*2*) Rules under this section may, among other matters,—

(*a*) declare the times and places at which, and the manner in which, surveys are to be made;

(*b*) regulate the duties of the surveyor making a survey and, where two surveyors are employed, assign the respective duties of each of the surveyors employed;

(*c*) declare the form in which the declarations of surveyors and certificates of survey under this Act are to be framed, and the nature of the particulars which are to be stated therein, respectively; and

(*d*) fix the rates according to which the fees payable [2][in respect of surveys] are to be calculated in the case of all or any of the ports of survey within the territories under its administration.

Power for Local Government to exempt certain steam-ships.

25. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of this chapter shall not apply in the case of any specified [steam-ship or] class of steam-ships, or shall apply [4][thereto] with such modifications as the Local Government prescribes.

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[1] For rules regulating the making of surveys at certain ports in the Presidency of Bombay, *see* Bom. R and O.; Bombay Gazette, 1907, Pt. I, p. 337; Sind Gazette, 1901, Pt. I, p. 1002; in the port of Aden, *see* Bombay Gazette, 1908, Pt. I, p. 853.

For notification applying section 23, *supra*, to steam-ships of the Austrian Lloyd's Steam Navigation Company, *see* Bombay Gazette, 1907, Pt. I, p. 129.

For rules for Calcutta, *see* Calcutta Gazette, 1890, Appendix, 30th April; *ibid*, 1899, Pt. I, p. 672; *ibid*, 1902, Pt. I, p. 337; *ibid*, 1903, Pt I, p. 1082 (revised form of certificate).

For rules for Burma, *see* Bur. R. M; Burma Gazette, 1903, Pt. I, p. 574; *ibid*, 1907, p. 590.

For rules for Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Pt. II, p. 534.

[2] These words in s. 24, cl. (*d*), were substituted for the words "for certificates of survey" by s. 21 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), General Acts, Vol. IV.

[3] Inserted by s. 3 of the Indian Steam-ships (Amending and Validating) Act, 1902 (III of 1902), General Acts, Vol. V.

[4] Substituted for the words "to them" by *ibid*.

CHAPTER III.

EXAMINATION AND CERTIFICATES OF ENGINEERS AND ENGINE-DRIVERS.

Appointment of examiners.

26. The Local Government may, from time to time,[1] appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency as engineers or engine-drivers.

Grant of engineers' and engine-drivers' certificates of competency.

27. (*1*) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as a first-class engineer or as a second-class engineer, or as an engine-driver, as the case may be :

Provided that the Local Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

(*2*) Every certificate granted under this section shall be in the prescribed form.

Power for Local Government to cancel engine-driver's certificates.

28. Notwithstanding anything contained in the Indian Merchant Shipping Act, 1883, [2] or any other law for the time being in force, the Local Government may at any time, without any formal investigation, suspend or cancel any engine-driver's certificate granted by it under this Act, if, in its opinion, the holder is, or has become, unfit to act as an engine-driver.

V of 1883.

Certificates to be made in duplicate.

29. Every certificate of competency granted under this Act shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

Copy of certificate to be granted in certain cases.

30. Whenever an engineer or engine-driver proves to the satisfaction of the Local Government which granted his certificate that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which, by the record kept as provided by law, he appears to be entitled shall be granted to him, and shall have all the effect of the original.

Steam-ships required to carry first-class and second class engineers.

31. (*1*) A British steam-ship shall not proceed from any port in British India to any port or place not being either in British India, or on the continent of India, or in the Island of Ceylon, unless she has,—

(*a*) if the steam-ship has engines of one hundred nominal horse-power or upwards, as her first and second engineers two certificated

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[1] For examiners appointed for the port of (1) Karachi, *see* Bom. R. and O., Sind Gazette, 1899, Pt. II, p. 113; and (2) Bombay, *see* Bombay Gazette, 1904, Pt. I, p. 147; 1898, Pt. I, p. 457.

[2] *Supra.*

engineers, the first possessing a first-class engineer's certificate and the second a second-class engineer's certificate or a certificate of the higher grade, granted under this Act or the Merchant Shipping Acts, 1854 to 1883,[1] or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869 ;[2] 17 & 18 Vict., c. 104, &c. 32 & 33 Vict., c. 11.

(*b*) if the steam-ship has engines of under one hundred nominal horse-power, as her only or first engineer an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (*a*).

(*2*) A foreign steam-ship having engines of fifty nominal horse-power or upwards shall not carry passengers from any port in British India to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port in British India, to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has, as her only or first engineer, an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (*a*) of sub-section (*1*).

Power for Local Government to require certain steam-ships to carry engine-drivers.

32. (*1*) On and from such day as the Local Government,[3] by notification in the official Gazette, directs in this behalf, a foreign steam-ship having engines of under fifty nominal horse-power shall not carry passengers from any port within the territories administered by that Local Government to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port within those territories to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has as her engineer a person possessing an engine-driver's certificate granted under this Act or an engineer's certificate of either of the grades referred to in the last foregoing section.

(*2*) The Local Government may at any time, by a like notification, cancel any notification issued by it under this section.

Exemption of inland steam-vessels.

33. Nothing in section 31 or section 32 shall apply to any steam-ship to which the provisions of the Inland Steam-vessels Act, 1884,[4] are applicable.

Penalty for serving, or engaging a

34. (*a*) If any person who has been engaged to serve in any of the capacities referred to in section 31 or section 32 in any steam-ship to which

[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have been repealed.

[2] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which this Act has been repealed.

[3] The date fixed was the date the Act came into force for the Presidency of Bombay, *see* Bom. R. and O. ; for Burma, *see* Bur. R. M. ; for Bengal, *see* Ben. R. and O.

[4] *Supra.*

those sections apply, respectively, proceeds in the steam-ship in that capacity without being at the time entitled to, and possessed of, the certificate required by those sections, and

person to serve, as engineer or engine-driver without a certificate.

(*b*) if any person employs any person in any capacity referred to in section 31 or section 32 in any steam-ship to which those sections apply, respectively, without ascertaining that he is at the time entitled to, and possessed of, the certificate required by those sections,

he shall be punished with fine which may extend to five hundred rupees.

Production of certificates.

35. The provisions of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*)[1] with respect to the certificates of competency or service of the master and mate contained in section 31 and section 32 of that Act shall apply to certificates of competency granted under this Act in the same manner as if certificates of competency granted to engineers under this Act were specially mentioned and included in those sections.

Power for Local Government to make rules as to grant of certificates of competency.

36. The Local Government may make rules[2] to regulate the granting of certificates of competency under this Act, and may by such rules—

(*a*) provide for the conduct of the examinations of persons desirous of obtaining certificates of competency as engineers or engine-drivers under this Act;

(*b*) prescribe the qualifications to be respectively required of persons desirous of obtaining first-class engineers' certificates, second-class engineers' certificates and engine-drivers' certificates, respectively;

(*c*) fix the fees to be paid by all applicants for examination; and

(*d*) prescribe the form in which certificates are to be framed, and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

CHAPTER IV.

Investigations into Explosions.

Power to investigate causes of explosions on board steam-ships.

37. (*1*) Whenever any explosion occurs on board any steam-ship on or near the coasts of British India, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit.

[1] The Indian Merchant Shipping Act, 1859, General Acts, Vol. I.

[2] For rules under this section made for (1) the Presidency of Bombay, *see* Bom. R. and O.; Bombay Gazette, 1902, Pt. I, p. 1563; *ibid*, 1903. Pt. I, p. 993; Sind Gazette, 1900, Pt. I, p. 2; (2) Bengal, *see* Calcutta Gazette, 1905, Pt. I, p. 663; *ibid*, 1906, Pt. I, p. 2119; (3) Burma, *see* Bur. R. M.

(*2*) The person or persons so directed may enter into and on the steam-ship, with all necessary workmen and labourers, and remove any portion of the steam-ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Local Government what, in his or their opinion, was the cause of the explosion.

(*3*) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.[1] XLV of 1860.

CHAPTER V.

SUPPLEMENTAL.

Jurisdiction of Magistrate.

38. No Magistrate shall try any offence under this Act unless he is a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the first class.

Place of trial.

39. If any person commits an offence against this Act, he shall be triable for the offence in any place in which he may be found, or which the Local Government, from time to time, by notification[2] in the official Gazette, directs in this behalf, or in any other place in which he might be tried under any other law for the time being in force.

Distress of steam-ship.

40. Where the owner or master of a steam-ship is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that steam-ship, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct that it be levied by distress and sale of the steam-ship, and the tackle, apparel and furniture thereof or so much thereof as is necessary.

Application of Act to ships propelled by electricity or mechanical power.

[3] **41.** The provisions of this Act shall apply to ships propelled by electricity or other mechanical power, with such modifications as the Governor General in Council may prescribe for the purpose of adaptation.

Procedure for making, publication and confirmation of rules.

42. (*1*) A Local Government making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.

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[1] General Acts, Vol. I.

[2] For notification by the Government of Burma, *see* Bur. R. M.

[3] Inserted by the Indian Steam-ships Law Amendment Act, 1909 (I of 1909) s. 5, General Acts, Vol. VI. Appendix. The original section 41 was repealed by Act X of 1887, General Acts, Vol. IV.

[4] For notification issued under this clause, *see* Gazette of India, 1885, Pt. I. p. 578, and *ibid*, 1891, Pt. I, p. 425. For notification for Eastern Bengal and Assam, *see ibid*, 1907, Pt. I, p. 850.

(*3*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*4*) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) A rule made under this Act shall not take effect until it has been sanctioned by the Governor General in Council and published in the local official Gazette.

(*6*) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made and sanctioned.

(*7*) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE SCHEDULE.

(*See section 10A.*[1])

RATES OF FEES.

	Tons.	Rs.
For steam-ships of less than	200	40
„ „ 200 tons and up to	350	50
„ „ 350 „ „ „	700	60
„ „ 700 „ „ „	1,000	80
„ „ 1,000 „ „ „	1,500	100
„ „ 1,500 „ and upwards	...	120

ACT No. IX OF 1884.[2]

[*16th May 1884.*]

An Act to amend the Legal Practitioners Act, 1879[3], and the Indian Stamp Act, 1879.

VIII of X79.

WHEREAS it is expedient to amend the Legal Practitioners Act, 1879, in manner in this Act appearing ;

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[1] This reference was substituted for the reference to s. 14 by s. 22 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), Vol. IV.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt. V, p. 658; for Proceedings in Council, *see ibid*, Supplement, pp. 1598 and 1651, and *ibid*, 1884, Supplement, p. 847.

[3] General Acts, Vol. III.

And whereas it is also expedient to amend the Indian Stamp Act, 1879, I of 1879. in so far as it relates to the duty chargeable on the enrolment of legal practitioners;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Legal Practitioners Act, 1884; and

(*2*) It shall come into force at once.

Amendment of section 4 of Act XVIII of 1879.

2. In section 4 of the Legal Practitioners Act, 1879[1], for the words XVIII of 1879. "as an advocate on the roll of the Chief Court of the Punjab" the words "under section 41 of this Act" shall be substituted.

Addition of a proviso to section 13 of same Act.

3. To section 13 of the same Act the following proviso shall be added:—

"Provided that where the party is—

(*a*) a pardánashín woman, or

(*b*) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof."

Amendment of section 14 of same Act.

4. In section 14 of the same Act, before the words "any District Magistrate" the words "any Judge of a Court of Small Causes of a Presidency-town" shall be inserted.

Amendment of section 25 of same Act.

5. In section 25 of the same Act, after the word "annexed" the words "and of such description as the Local Government may from time to time prescribe" shall be inserted.

Amendment of section 27 of same Act.

6. To the first clause of section 27 of the same Act the following shall be added, namely:—"and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10."

Amendment of section 38 of same Act.

7. In section 38 of the same Act, for the words "by the Chief Court of the Punjab" the words "under section 41 of this Act" shall be substituted.

New section substituted for section 41 of same Act.

8. For section 41 of the same Act the following section shall be substituted, namely:—

Power for certain High Courts to enrol advocates.

"41. (*1*) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

"(*2*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

[1] General Acts, Vol. II.

"(3) The High Court may dismiss any advocate so enrolled or suspend him from practice.

"(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government."

9. To the same Act the following section shall be added, namely :— New section added to same Act.

"42. Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed." Repeal of Acts I of 1846 and XX of 1853.

10. (*1*) [*Amendment of Schedules I and II of Act I of 1879.* (*Duty on enrolment of advocates.*)] *Rep. by the Indian Stamp Act, 1899* (*II of 1899*), *General Acts, Vol. V.*

(*2*) *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

ACT No. XII OF 1884.[1]

[*24th July 1884.*]

An Act to amend and provide for the extension of the Northern India Takkáví Act, 1879.

X of 1879.

WHEREAS it is expedient to amend the Northern India Takkáví Act, 1879, and provide for its extension to any part of British India; Preamble.

It is hereby enacted as follows :—

1. (*1*) This Act may be called the Agriculturists' Loans Act, 1884; and Short title.

(*2*) It shall come into force on the first day of August 1884. Commencement.

2. (*1*) This section and section 3 extend to the whole of British India. Local extent.

(*2*) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmere.

(*3*) But any other Local Government may, from time to time, by

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 2; for Proceedings in Council, *see ibid*, Supplement, pp. 41, 165 and 1130.

notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.[1]

Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880.

3. (*1*) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed. X of 1879. XV of 1880.

(*2*) All rules made under those Acts shall be deemed to be made under this Act.

Power for Local Government to make rules.

4. (*1*) The Local Government may, from time to time, [2][subject to the control] of the Governor General in Council, make rules[3] as to loans to be made to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883,[4] but connected with agricultural objects. XIX of 1883.

(*2*) All such rules shall be published in the local official Gazette.

Recovery of loans.

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

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[1] Act XII of 1884 has by notification been extended to—

the Lower Province of Bengal . . .	*see* Calcutta Gazette, 1885, Pt. I, p. 555;
the Madras Presidency	*see* Fort St. George Gazette, 1886, Pt. I, p. 138;
the Santhal Parganas	*see* Calcutta Gazette, 1885, Pt. I. p. 905;
the Province of Coorg	*see* Coorg District Gazette, 1887, Pt. I, p. 670.

The Act has been declared in force in the whole of Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), Bur. Code. S. 2 of the Act was previously declared in force by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Burma Gazette, 1896, Pt. I, p. 112, and under that section, ss. 4, 5 and 6 of the Act were extended there, *see ibid*, p. 121.

It has been declared in force in the Angul District by notification under s. 3 (2) of the Angul District Regulations, 1894 (Ben. Code), *see* Calcutta Gazette, 1896, Pt. I, p. 1231.

[2] Substituted for the words "with the previous sanction" by s. 6 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), General Acts, Vol. VI.

[3] For rules under this power for—

(*a*) Ajmer-Merwara. *see* Aj. R. and O.;
(*b*) Andaman and Nicobar Islands, *see* Andaman and Nicobar Gazette, 1907, Pt. I, p. 186;
(*c*) Assam, *see* Assam Gazette, 1898, Pt. II, p. 244;
(*d*) Bengal, *see* Calcutta Gazette, 1903, Pt. I, p. 560;
(*e*) Bombay, *see* Bom. R. and O.; Bombay Gazette, 1900, Pt. I, pp. 967, 1898; *ibid*, 1901, Pt. I, p. 1366;
(*f*) Burma, *see* Burma Gazette, 1907, Pt. I, p. 1021;
(*g*) Central Provinces, *see* Central Provinces Gazette, 1908, Pt. III, p. 563;
(*h*) Coorg, *see* Coorg District Gazette, 1908, Pt. I, p. 74;
(*i*) Madras [combined with rules under s. 10 of the Land Improvement Loans Act, 1883 (XIX of 1883)], *see* Fort St. George Gazette, 1897, Pt. I, p 1322;
(*j*) Punjab, *see* Punjab Gazette, 1901, Pt. I, p. 827; *ibid*, 1902, Pt. I, p. 20;
(*k*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

[4] *Supra.*

Liability of joint borrowers as among themselves.

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

ACT No. II OF 1885.[1]

[*30th January 1885.*]

An Act to amend the Negotiable Instruments Act, 1881.

XXVI of 1881.

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881,[2] in manner hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Negotiable Instruments Act, 1885.

Amendment of section 7, Act XXVI of 1881.

XXVI of 1881.

2. In the fourth paragraph of section 7 of the Negotiable Instruments Act, 1881,[2] for the words "When acceptance is refused and the bill is protested for non-acceptance" the following shall be substituted, namely :— "When a bill of exchange has been noted or protested for non-acceptance or for better security".

New section inserted after section 45 of the same Act. Holders' right to duplicate of lost bill.

3. After section 45 of the same Act the following shall be inserted :—

"45A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

"If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so."

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 19; for Report of the Select Committee, *see ibid*, 1885, Pt. V, p. 3; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 393 and 399, and *ibid*, 1885, Supplement, p. 183.

This Act is now in force in the whole of Upper Burma (except the Shan States) as amending the original Act XXVI of 1881, declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s. 4, Bur. Code.

Act II of 1885 had been previously declared in force in the Town of Mandalay only in Upper Burma by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*), now repealed by Act XIII of 1898.

[2] *Supra.*

Addition to sections 61 and 64 of the same Act.

4. To section 61, and the first paragraph of section 64, of the same Act, the following shall be added :—

"Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient."

Addition to section 101 of the same Act.

5. To section 101 of the same Act the following shall be added :—

"A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter."

Section inserted after section 104 of the same Act.

6. After section 104 of the same Act the following shall be inserted :—

When noting equivalent to protest.

"104A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting."

7. [*Section 108 of the same Act, in part, repealed.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 109 of same Act.

8. In the same Act, section 109,—

(*a*) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely :—"by writing on the bill under his hand."

(*b*) [*Repeal of last twelve words of section 109.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 113 of same Act.

9. In the same Act, section 113, after the words "the person so paying" the words "or his agent in that behalf" shall be inserted.

New chapter added to same Act.

10. After Chapter XVI of the same Act the following shall be inserted :—

"CHAPTER XVII.

"NOTARIES PUBLIC.

Power to appoint notaries public.

"138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to make rules for notaries public.

"139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries."

ACT No. III OF 1885.[1]

[*30th January 1885.*]

An Act to amend the Transfer of Property Act, 1882.[2]

IV of 1882.

WHEREAS it is expedient to amend the Transfer of Property Act, 1882;[2] It is hereby enacted as follows:—

Amendment of section 1 of Act IV of 1882.

1. For the fifth clause of section 1 of the said Act the following shall be substituted, namely:—

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

"Sections 54, paragraphs 2 and 3, 59, 107 and 123."

Addition to same section.

2. The following clause shall be deemed to have been added to the first section of the said Act from the date on which it came into force, namely:—

"Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,[3] under the power conferred by the first section of that Act or otherwise."

III of 1877.

Addition to section 4 of same Act.

3. To section 4 of the said Act the following shall be added, namely:—

"And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1877."[3]

Addition to section 6 of same Act.

4. To section 6 of the said Act the following clause shall be added:—

"(*i*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in

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[1] Short title, "The Transfer of Property Act (1882), Amendment Act, 1885," *see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 475; for Report of the Select Committee, *see ibid*, 1885, Pt. V, p. 37; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1169 and 1273, and *ibid*, 1885, Supplement, p. 185.

This Act is in force—

(*1*) in the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay, *see* Bombay Government Gazette, 1892, Pt. I, p. 1071;

(*2*) the area included within the local limits of Rangoon Town as from time to time defined for the purposes of the Lower Burma Courts Act, 1900 (VI of 1900), and the Municipalities of Maulmain, Bassein and Akyab as constituted from time to time under the Burma Municipal Act, 1893 (Bur. Act III of 1898), *see* Burma Gazette, 1904, Pt. I, pp. 628 and 684;

as amending the Transfer of Property Act, 1882 (IV of 1882). As regards its applicability to the whole of Lower Burma in so far as it affects sections 54, 59, 107 and 123 of the Transfer of Property Act, 1882, *see* Notification No. 387, Burma Gazette, 1904, Pt. I, p. 684.

[2] *Supra.*

[3] *See* now the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee."

Amendment of section 69 of same Act.

5. In section 69 of the said Act—

(*a*) after the words "is valid in the following cases" the words "and in no others" shall be inserted; and

(*b*) after the words "Hindu, Muhammadan or Buddhist", in both places where they occur, there shall be inserted the words "or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette."

ACT No. IX OF 1885.[1]

[*29th May 1885.*]

An Act * * *[2] to amend * * * *[3] the Bengal Excise Act, 1878, and the Sea Customs Act, 1878.[4]

WHEREAS it is expedient * * * *[2] to amend * * * * *[3] section 18 of the Bengal Excise Act, 1878, and [4] sections 145, 149 and 207 of the Sea Customs Act, 1878, in manner hereinafter appearing; It is hereby enacted as follows:— Ben. Act VII of 1878. VIII of 1878.

1. [*Repeal of part of section 6 of Act XI of 1882.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

2. [*Amendment of section 7 of Act XXII of 1881.*] *Rep. by the Excise Act, 1896 (XII of 1896).*

Amendment of section 18 of Ben. Act

3. In section 18 of the Bengal Excise Act, 1878, for the words "at the rate leviable under any Tariff Act for the time being in force" the words "at VII of 1878.

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[1] Short title, "The Excise and Sea Customs Law Amendment Act, 1885," *see* the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 599; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1651 and 1709, and *ibid*, 1885, Supplement, p. 897.

So far as the Act amends the Sea Customs Act, 1878 (VIII of 1878), it is in force in Upper Burma (except the Shan States), *see* s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

Ss. 1, 3 and 4 of this Act were declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886); ss. 3 and 4 are declared in force there by Regulation III of 1872 as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3; Ben. Code.

[2] The words "to repeal part of section 6 of the Indian Tariff Act, 1882, and" repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] The words "the Excise Act, 1881," in the title and the words "section 7 of the Excise Act, 1881 in the preamble were repealed by the Excise Act, 1896 (XII of 1896).

[4] General Acts, Vol. II.

such rate as the Local Government may from time to time fix in respect of such spirituous liquor" shall be substituted; but nothing in this section shall affect any Act passed after this Act comes into force by the Lieutenant-Governor of Bengal in Council. VII of 1878.

4. [*Saving of duties already fixed under section 6 of Act XI of 1882.*] *Rep. by the Repealing and Amending Act, 1903 (I of 1903).*[1]

VIII of 1878. 5. (*1*) In section 145 of the Sea Customs Act, 1878,[2] after the word "shall" the words "except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse" shall be inserted. Amendment of sections 145 and 149 of Act VIII of 1878.

(*2*) In section 149 of the same Act, after the words "custom-house" the words "or to a warehouse licensed under any enactment for the time being in force" shall be inserted.

6. In section 207 of the same Act, for the word "respectively" the words "or any like body hereafter created for any other port" shall be substituted. Amendment of section 207 of the same Act.

ACT No. XII OF 1885.[3]

[*22nd July 1885.*]

An Act to amend the law relating to the carriage of passengers by sea.

WHEREAS by section 99 of an Act of the Imperial Parliament called "The Passengers Act, 1855,"[4] it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts;" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;" 18 & 19 Vict., c. 119.

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[1] General Acts, Vol. V.
[2] General Acts, Vol. II.
[3] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 602; for Report of the Select Committee, *see ibid*, 1885, Pt. IV, p. 185; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1652 and 1709, and *ibid*, 1885, Supplement, p. 1179.
[4] Coll. Stat., Vol. I, Ed. 1881, p. 640.

And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

And whereas by an Act of the Imperial Parliament called "The Passengers Act Amendment Act, 1863," certain parts of the Passengers Act, 1855, which were so made applicable, have been amended, and it is provided that the said Acts of the Imperial Parliament shall be construed together as one Act; 26 & 27 Vict., c. 51. 18 & 19 Vict., c. 119.

And whereas it is expedient that the amendments so made in the Passengers Act, 1855, should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Sea Passengers Act, 1885; and

(*2*) It shall come into force on the first day of October, 1885.

2. [*Repeal of Act II of 1860.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Certain provisions of the Statutes made applicable to specified voyages from India.

3. The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act, 1855, as amended by the Passengers Act Amendment Act, 1863), are declared applicable to the carriage of passengers upon the following voyages, namely:— 18 & 19 Vict., c. 119. 26 & 27 Vict., c. 51.

(*a*) voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji;

(*b*) voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana;

(*c*) voyages from the ports of Calcutta, Madras and Bombay to the Netherlands colony of Dutch Guiana;

(*d*) voyages from the ports of Calcutta, Madras and Bombay to the Danish colony of St. Croix;

(*e*) voyages under the Native Passenger Ships Act, 1876, from Calcutta, Madras, Bombay, Karachi, Rangoon and other ports in British India to the Straits Settlements, to the protected Native States adjoining the Straits Settlements, to Australia, and to ports in the Red Sea, Gulf of Aden or Persian Gulf and on the East Coast of Africa. VIII of 1876.

Governors or Consuls may pay expenses of passengers taken off passenger-ship.

4. If the passengers or cabin-passengers upo any such voyage as is specified in the last preceding section are taken off from the ship carrying them or are picked up at sea from any boat, raft or otherwise, it shall be lawful, if the port or place to which they are conveyed is in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country, for Her Majesty's Consular Officer at such port or place therein, to defray all or any part of the expenses thereby incurred.

Governors or Consuls may send on passengers, if the master of the ship fail to do so.

5. If any passenger or cabin-passenger of any such passenger-ship as aforesaid, without any neglect or default of his own, finds himself within any colonial or foreign port or place other than that for which the ship was originally bound, or at which he, or the Emigration Agent, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose, or for Her Majesty's Consular Officer at the foreign port or place, as the case may be, to forward the passenger or cabin-passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of such passenger or cabin-passenger, gives to the Governor or Consular Officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger or cabin-passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

Expenses incurred under sections 4 and 5 to be a Crown debt.

6. (*1*) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular Officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers and cabin-passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

(*2*) A certificate in the form given in the schedule hereto annexed or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consuar Officer (as the case may be), stating the total amount of the expenses, shall in any suit or other proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular Officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred :

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers and cabin-passengers who may have embarked in the ship ; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt ; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

Insurance.

7. No policy of assurance effected in respect of any passages or of any passage or compensation money by any person by this Act made liable in the events aforesaid to provide those passages or to pay that money, or in respect of any other risk under this Act, shall be deemed invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

THE SCHEDULE.

FORM OF GOVERNOR'S OR CONSUL'S CERTIFICATE OF EXPENDITURE IN THE CASE OF PASSENGERS SHIPWRECKED, ETC.

(*See section 6.*)

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (*a*), and in forwarding to their destination

passengers [including cabin-passengers (*b*),] who were proceeding from to in the

(*a*) ***N.B.*—1.** If more passengers were rescued than forwarded, or if bedding, etc., was not supplied, alter the certificate to suit the facts of the case.

(*b*) ***N.B.*—2.** Omit words in brackets when necessary.

passenger-ship which was wrecked at sea, etc. (*c*).

(*c*) *N.B.*—3. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of , 18 .

Governor of, etc., (or, as the case may be)
Her Britannic Majesty's Consul at .

THE INDIAN TELEGRAPH ACT, 1895.

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ACT No. XIII OF 1885.[1]

[*22nd July 1885.*]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (*1*) This Act may be called the Indian Telegraph Act, 1885.

(*2*) It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty ; and

Short title, local extent and commencement.

(*3*) It shall come into force on the first day of October 1885.

I of 1876.

2. The Indian Telegraph Act, 1876, is hereby repealed.

Repeal and savings.

But all licenses granted and rules made under that Act or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

3. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(*1*) "telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism :

(*2*) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Government or by a person licensed under this Act :

(*3*) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered :

(*4*) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same :

For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 481 ; for Report of the Select Committe, *see ibid*, 1885, Pt. IV, p. 192 ; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1169 and 1296, and *ibid*, 1885, Supplement, p. 1181.

This Act was declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), *s.* 6 (*1*) and is in force there under s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, by which Act XX of 1886 has been repealed ; in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code ; in British Baluchistan, *see* s. 3 and Schedule to the British Baluchistan Laws Regulation, 1890 (I of 1890), Bal. Code ; and in the Angul District by notification under *s.* 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code, *see* Calcutta Gazette, 1904, Pt. I, p. 1298.

(*5*) " post " means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line :

(*6*) " telegraph authority " means the Director General of Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act :

(*7*) " local authority " means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege in respect of telegraphs, and power to grant licenses.

4. Within British India, the Governor General in Council shall have the exclusive privilege of establishing, maintaining and working telegraphs :

Provided that the Governor General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain or work a telegraph within any part of British India.

Power for Government to take possession of licensed telegraphs and to order interception of messages.

5. (*1*) On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may—

(*a*) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act ; or

(*b*) order that any message or class of messages to or from any person or class of persons or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

(*2*) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (*1*) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to establish telegraph on land of Railway Company.

6. Any Railway Company, on being required so to do by the Governor General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

(*Part II.—Privileges and Powers of the Government.*)

Power to make rules for the conduct of telegraphs.

7. (*1*) The Governor General in Council may, from time to time, by notification in the Gazette of India, make rules [1] consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

(*2*) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

(*a*) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted ;

(*b*) the precautions to be taken for preventing the improper interception or disclosure of messages ;

(*c*) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved ; and

(*d*) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.

(*3*) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the Governor General in Council may, by the rules, prescribe fines for any breach of the same :

Provided that the fines so prescribed shall not exceed the following limits, namely :—

(i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues ;

(ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

Revocation of licenses.

8. The Governor General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

Government not responsible for loss or damage.

9. The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message ; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

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[1] For rules framed under this section, and for Telegram Subscription Rules in conjunction with Telephone Exchanges, *see* Gen. R. and O., Gazette of India, 1907, Pt. I, pp. 378, 400, 988; *ibid*, 1908, pp. 74, 241-3, 352, 558, 594, 731, 784.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

Power for telegraph authority to place and maintain telegraph lines and posts.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property :

Provided that—

(*a*) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained ;

(*b*) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post ; and,

(*c*) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority ; and

(*d*) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (*c*), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property in order to repair or remove telegraph lines or posts.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to property vested in or under the control or management of local authorities.

Power for local authority to give permission under section 10, clause (*c*), subject to conditions.

12. Any permission given by a local authority under section 10, clause (*c*), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to require removal or alteration of telegraph line or post.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power to alter position of gas or water pipes or drains.

14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

(*a*) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes between telegraph authority and local authority.

15. (*1*) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (*c*), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

(*2*) An appeal from the determination of the officer so appointed shall lie to the Local Government; and the order of the Local Government shall be final.

Provisions applicable to other property.

Exercise of powers conferred by

16. (*1*) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (*d*) of that section is resisted or obstructed, the

section 10, and disputes as to compensation, in case of property other than that of a local authority.

District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(*2*) If, after the making of an order under sub-section (*1*), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.[1] XLV of 1860.

(*3*) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (*d*), it shall, on application for that purpose be either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(*4*) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (*3*), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(*5*) Every determination of a dispute by a District Judge under sub-section (*3*) or sub-section (*4*) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

Removal or alteration of telegraph line or post on property other than that of a local authority.

17. (*1*) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (*d*), he shall, when making the requisition, tender to the telegraph authority

[1] Genl. Acts, Vol. I.

the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

Removal of trees in erupting telegraphic communication.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Megistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

Telegraph lines and posts placed before the passing of this Act.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

PART IV.

PENALTIES.

Establishing, maintaining or working unlicensed telegraph or breaking condition of license.

20. If any person establishes, maintains or works a telegraph within British India, otherwise than as permitted by a license granted under section 4, or breaks any condition contained in such a license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the line is maintained or worked or the breach of the condition continues.

Using such telegraphs.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service

incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, be shall be punished with fine which may extend to fifty rupees.

Opposing establishment of telegraphs on railway land.

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Intrusion into signal-room, trespass in telegraph office or obstruction.

23. If any person—

(*a*) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or

(*b*) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(*c*) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(*d*) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

Unlawfully attempting to learn contents of messages.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Intentionally damaging or tampering with telegraphs.

25. If any person, intending—

(*a*) to prevent or obstruct the transmission or delivery of any message, or

(*b*) to intercept or to acquaint himself with the contents of any message, or

(*c*) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer or other official making away with or altering or unlawfully intercepting

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(*a*) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(*b*) wilfully and otherwise than in obedience to an order of the Governor General in Council or of a Local Government, or of an officer specially authorized by the Governor General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

or disclosing messages, or divulging purport of signals.

(*c*) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer fraudulently sending messages without paymen .

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the Government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the Government or that person, be shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Misconduc t.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Sen ng fabricated message.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Retaining a message delivered by mistake.

30. If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Bribery.

XLV of 1860.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code[1]; and in the

[1] General Acts, Vol. I.

definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Attempts to commit offences.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

SUPPLEMENTAL PROVISIONS.

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

33. (*1*) Whenever it appears to the Local Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the Local Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(*2*) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the Local Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(*3*) All moneys payable under sub-section (*2*) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(*4*) The Local Government may, by order in writing, define the limits of any place for the purposes of this section.

Application of Act to Presidency towns and Rangoon.

[1]**34.** (*1*) This Act, in its application to the Presidency-towns, shall be read as if the words "District Magistrate" in section 16, sub-section (*1*), and section 17, sub-sections (*2*) and (*3*), for the words "Magistrate of the first or second class" in section 18, sub-section (*1*) and for the word "Magistrate" in section 18, sub-section (*2*), there had been enacted the words "Commissioner

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[1] S. 34 was added by the Indian Telegraphs (Presidency-towns) Act, 1888 (XI of 1888), General Acts, Vol. IV.

of Police", and for the words "District Judge", in section 16, sub-sections (*3*), (*4*) and (*5*), the words "Chief Judge of the Court of Small Causes".

(*2*) Section 16, in its application to the town of Rangoon, shall be read as if for the words "District Judge", wherever they occur in that section, there had been enacted the words "Judge of the Court of Small Causes".

(*3*) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (*3*) of section 16 shall be the same as would be payable under the Court-fees Act, 1870,[1] in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (*3*) or sub-section (*4*) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.[2]

VII of 1870.

XV of 1882.

ACT No. XV OF 1885.[3]

[*2nd October 1885.*]

An Act to amend the Local Authorities Loan Act, 1879.

XI of 1879.

WHEREAS it is expedient to amend the Local Authorities Loan Act, 1879 [2]; It is hereby enacted as follows:—

Addition to section 8, Act XI of 1879.

1. After clause (*b*) of the proviso to section 8 of the said Act the following shall be added:—

"or

"(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied."

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[1] General Acts, Vol. II.

[2] *Supra.*

[3] Short title, "The Local Authorities Loan Act (1879) Amendment Act, 1885," *see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 1; for Report of the Select Committee, *see ibid*, Pt. IV, p. 225; and for Proceedings in Council, *see ibid*, 1885, pp. 845, 859 and 1473.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3 (*e*). Code. The Act is in force in Upper Burma (except the Shan States) as amending Act XI of 1879 *see* s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code. Under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, it has been previously extended there, *see* Burma Gazette, 1888, Pt. I, p. 544, and Gazette of India, 1889, Pt. I, p. 51.

THE LAND ACQUISITION (MINES) ACT, 1885.

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2. Saving for mineral rights of the Government.
3. Declaration that mines are not needed.
4. Notice to be given before working mines lying under land.
5. Power to prevent or restrict working.
6. Mode of determining persons interested and amount of compensation.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Mining communications.
9. Local Government to pay compensation for injury done to mines ;
10. and also for injury arising from any airway or other work.
11. Power to officer of Local Government to enter and inspect the working of mines.
12. Penalty for refusal to allow inspection.
13. If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.
14. Construction of Act when land acquired has been transferred to a local authority or company.
15. Pending cases.
16. Definition of local authority and Company.
17. This Act to be read with Land Acquisition Act, 1870.

ACT No. XVIII OF 1885.[1]

[*16th October 1885.*]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.[2]

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870[2]; It is hereby enacted as follows :—

Short title, commencement and local extent.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885; and X of 1870.

[1] For the Statement of Objects and Reasons *see* Gazette of India, 1885, Pt. V, p 145; for Report of the Select Committee, *see ibid*, Pt. IV, p. 264; and for Proceedings in Council, *see ibid*, Supplement, pp. 336 and 1520, and *ibid* Extra Supplement, dated 14th March, 1885, p. 41.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code; in Angul and the Khondmals, *see* the Schedule to the Angul District Regulation, 1894 (I of 1894), Ben. Code.

[2] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

(*2*) It shall come into force at once.

(*3*) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal; but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Declaration that mines are not needed.

X of 1870.

3. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870,[1] that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(*2*) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,[1] and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11[2] of the said Land Acquisition Act in respect of the mines, and may—

X of 1870.

(*a*) when he makes an award under section 14[2] of that Act, insert such a statement in his award;

(*b*) when he makes a reference to the Court under section 15[3] of that Act, insert such a statement in his reference; or

(*c*) when he takes possession of the land under section 17[4] of that Act, publish such a statement in such manner as the Governor General in Council may, from time to time, prescribe.

(*3*) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

Notice to be given before working

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working

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[1] *See* now s. 6 of the Land Acquisition Act, 1894 (I of 1894), General Acts Vol. IV.
[2] *See* now s. 11 of the Land Acquisition Act, 1894 (I of 1894).
[3] *See* now s. 19 of the Land Acquisition Act, 1894 (I of 1894).
[4] *See* now s. 17 of the Land Acquisition Act, 1894 (I of 1894).

mines lying under land.

or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

Power to prevent or restrict working.

5. (*1*) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(*2*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon the Local Government may publish in such manner as the Governor General in Council may, from time to time, direct, a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(*3*) If the declaration mentioned in case (*a*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(*4*) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,[1] for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively. X of 1870.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (*1*) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

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[1] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Local Government to pay compensation for injury done to mines;

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870 [1]

X of 1870.

and also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or company, as the case may be, which has acquired the land", were substituted.

Pending cases.

15. (*1*) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870,[1] are pending at the time when this Act comes into force, unless before that time the Collector has made, in X of 1870.

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

respect of the land, an award under section 14[1] or a reference to the Court under section 15[1] of that Act, or has taken possession of the land under section 17[1] of the same.

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870,[2] to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870,[2] consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner when he took possession, the statement mentioned in section 3 of this Act.

16. In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

Definition of local authority and Company.

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.[2]

This Act to be read with Land Acquisition Act, 1870.

THE INDIAN INCOME-TAX ACT, 1886.

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[1] *See* now ss. 11, 19 and 17, respectively, of the Land Acquisition Act, 1894 (I of 1894).
[2] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

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ACT No. II OF 1886.[1]

[*29th January 1886.*]

An Act for imposing a tax on income derived from sources other than agriculture.

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Extent and commencement.

1. (*1*) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the

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[1] Short title, "The Indian Income-tax Act, 1886"—*see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 33; for Report of the Select Committee, *see ibid*, Pt. IV, p. 41; and for Proceedings in Council, *see ibid*, Supplement, pp. 45, 179 and 214.

For consolidated rules made under the powers conferred by the Act, *see* Gazette of India, 1890, Pt. I, p. 409; Gen. R. and O.

Act II of 1886 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

The Act had been previously extended to these parganas under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), Gazette of India, 1896, Pt. I, p. 974.

It has also been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 and Sch. I, Bur. Code.

Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf; and

(*2*) It shall come into force on the first day of April 1886.

(*3*) [*Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).]

Repeal. **2.** On and from the day on which this Act comes into force the enactments specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

Definitions. **3.** In *this* Act, unless there is something repugnant in the subject or context,—

(*1*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund:

(*2*) "company" means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not:

(*3*) "prescribed" means prescribed by the Governor General in Council by notification in the Gazette of India, or by the Governor General in Council or a Local Government by rules made under this Act:

(*4*) "salary" includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit; but, subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance granted to meet specific expenditure:

(*5*) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf:

(*6*) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class:

(*7*) "person" includes a firm and a Hindu undivided family:

(*8*) "defaulter" includes a company or firm making default under this Act:

(*9*) "Collector" means the chief officer in charge of the revenue-administration of a district, and, in a presidency-town, any officer whom the Local Government, by notification in the official Gazette,[1] may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence:

(*10*) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association; or

(*b*) any person connected with the authority, company, body or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof; and

(*11*) "Part" means a Part of the second schedule to this Act.

CHAPTER II.

Liability to Tax.

Incomes liable to the tax.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

Exceptions.

5. (*1*) Nothing in section 4 shall render liable to the tax—

(*a*) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such; or

(*b*) any income derived from—

(i) agriculture, or

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[1] For notification by the Government of Madras investing the Collector of Madras with all the powers of a "Collector" under the Act, *see* Fort St. Gazette, 1886, Pt. I, p. 231.

(ii) the performance by a cultivator or receiver of rent-in-kind any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce ; or

(*c*) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (*a*), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which or the produce whereof any operation mentioned in clause (*b*) is carried on :

Provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue, of the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory or other out-building ; or

(*d*) any profits of a shipping company incorporated or registered out of British India and having its principal place of business out of India and its ships ordinarily engaged in seagoing traffic out of Indian waters ; or

(*e*) any income derived from property solely employed for religious or public charitable purposes ; or

(*f*) any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family when the company or the firm or the family is liable to the tax ; or,

(*g*) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth, of the income in respect whereof a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority or with the permission of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife ; or

(*h*) any interest on stock-notes ; or

(*i*) the salary of any officer, warrant-officer, non-commissioned officer or private of Her Majesty's Forces or of Her Majesty's Indian

Forces who is not in an employment which, according to the ordinary practice is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem ; or

(*j*) any person whose income from all sources is less than [1][one thousand] rupees per annum.

(*2*) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

Power to make exemptions.

6. The Governor General in Council may, by notification in the Gazette of India, exempt[2] from liability to the tax the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

CHAPTER III.

Assessment and Collection.

A.—Salaries and Pensions.

Mode of payment in case of Government officials and pensioners.

7. In the case of a person receiving any salary, annuity, pension or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension or gratuity shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

Mode of payment in case of servants and pensioners of local authorities.

8. (*1*) In the case of a person receiving any salary, annuity, pension or gratuity from a local authority, the tax to which he is liable under Part I shall, at the time of the payment to him of any of the salary, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(*2*) If that officer does not deduct and pay the tax as required by sub-section (*1*), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(*3*) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any

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[1] These words were substituted for "five hundred" by the Indian Income-tax (Amendment) Act, 1903 (XI of 1903), s. 2 (*1*), General Acts, Vol. V.

[2] For the consolidated notification as to exemptions from tax and assessment under the Act issued under this section and s. 38, *see* Gen. R. and O., and Gazette of India, 1907, Pt. I, p. 311.

salary, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(*4*) The power to deduct under this section shall be without prejudice to any other mode of recovery.

Mode of payment in case of servants and pensioners of companies and private employers.

9. (*1*) The tax to which a person receiving any salary, annuity, pension or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I shall be payable by him at the time when any portion of the salary, annuity, pension or gratuity is paid to him.

(*2*) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid, or any private employer, with respect to the recovery on behalf of the Government by the company, body, association or employer of the tax to which any person receiving any salary, annuity, pension or gratuity from the company, body, association or employer is liable under Part I.

Annual return by principal officer of company or association.

10. The principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

(*a*) the name of every person who is receiving at the date of the return any salary, annuity or pension, or has received during the year ending on that date any gratuity, from the authority, company, body or association, as the case may be, and the address of every such person so far as it is known ; and

(*b*) the amount of the salary, annuity, pension or gratuity so received by each such person, and the time at which the same becomes payable or, in the case of a gratuity, was paid.

B.—Profits of Companies.

Annual statement of nett profits.

11. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

Power to require officers of companies to produce accounts.

12. (*1*) If the Collector has reason to believe that a statement delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector, such of the accounts of the company as refer to the year to whic the statement relates and as are in his possession or power.

(*2*) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—Interest on Securities.

Mode of payment of tax on interest on securities.

13. (*1*) The tax payable under Part III in respect of the interest on any of the securities mentioned in that Part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(*2*) If that person does not deduct and pay the tax as required by sub-section (*1*), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

D.—Other Sources of Income.

Ordinary Mode of Assessment and Collection.

Collector to determine persons chargeable.

14. The Collector shall, from time to time, determine what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed.

Mode of making assessment.

15. (*1*) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

(*2*) In the case of a person for the first time becoming chargeable under Part IV within the year for which the assessment is to be made, or within the

year next before that year, assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

List of incomes under two thousand rupees.

16. (*1*) The Collector shall in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in his opinion amount to two thousand rupees.

(*2*) The list shall be in the prescribed language [1] or languages, and shall state in respect of every such person the following particulars, namely :—

(*a*) his name, and the source or sources of the income in respect of which he is chargeable ;

(*b*) the year or portion of the year for which the tax is to be paid ;

(*c*) the place or places, district or districts where the income accrues ;

(*d*) the amount to be paid ; and

(*e*) the place where, and the person to whom, the amount is to be paid.

(*3*) The list shall be filed in the office of the Collector, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(*4*) The list so filed shall be open to inspection at all reasonable times without any payment.

(*5*) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(*6*) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

Notices to persons with incomes of two thousand rupees and upwards.

17. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him stating the particulars (*a*) to (*e*), both inclusive, mentioned in section 16, sub-section (*2*), and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

[1] For notification prescribing language of lists in the Central Provinces, *see* C. P. R. and O.

Power to modify ordinary procedure in special cases.

18. (*1*) Notwithstanding anything contained in section 16 or section 17, the Local Government may make rules [1]—

(*a*) authorizing or directing a Collector in specified cases, or classes of cases, to include in a list under section 16 any person who is liable to be served with a notice under section 17 instead of or in addition to serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of or in addition to including him in such a list;

(*b*) authorizing the Collector in any specified town or place to cause a general notice to to published, inviting every person chargeable under Part IV to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return, in a prescribed form, published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March;

(*c*) authorizing the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV, inviting him to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return in a prescribed form accompanying the notice, of his income computed in the manner described in clause (*b*) of this sub-section.

(*2*) A return delivered under rules made under clause (*b*) or clause (*c*) of sub-section (*1*) must state the period during which the income has actually accrued; and there must be added at the foot thereof a declaration that the income shown in the return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other source of income.

(*3*) When a Collector authorized in that behalf by rules made under clause (*b*) or clause (*c*) of sub-section (*1*) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies

[1] For rules made by the—
(*1*) Government of Bombay, *see* Bom. R. and O.;
(*2*) Government of Madras, *see* Mad. R. and O.;
(*3*) Government of the United Provinces, *see* U. P. R. and O.;
(*4*) Chief Commissioner of Assam, *see* Assam Rules Manual;
(*5*) Chief Commissioner, Central Provinces, *see* C. P. R. and O.;
(*6*) Chief Commissioner of Coorg, *see* Coorg District Gazette, 1886, Pt. I, p. 253; *ibid*, 1901, Pt. I, p. 169.

in any list made under section 16 or serve a notice on him under section 17 until the time specified in the notice published or served under those rules has expired.

(*4*) Rules made under this section shall be published in the official Gazette.

Time and place of payment.

19. Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person, mentioned in the list or notice.

Trustees, Agents, Managers and Incapacitated Persons.

Trustees, guardians and committees of incapacitated persons to be charged.

20. A person being the trustee, guardian, curator or committee of any infant, married woman subject to the law of England, lunatic or idiot, and having the control of the property of the infant, married woman, lunatic or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

Non-residents to be charged in names of their agents.

21. Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

Receivers, managers, Courts of Wards, Administrators, General and Official Trustees.

22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators General of Bengal, Madras and Bombay, and the Official Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

Power to retain duties charged on trustees, etc.

23. When a trustee, guardian, curator, committee or agent is, as such, assesed under Part IV,

or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator General or an Official Trustee is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Occupying Owners.

Provision for tax on occupying owners.

24. (*1*) Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

(*2*) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

CHAPTER IV.

Revision of Assessment.

Petition to Collector against assessment under Part IV.

25. (*1*) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV may apply by petition to the Collector to have the assessment reduced or cancelled.

(*2*) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he satisfied that the objector had sufficient cause for not presenting it within that period.

(*3*) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

Hearing of petition.

26. The Collector shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition and pass such order thereon as he thinks fit.

Petition to Commissioner for revision.

27. Subject to the control of the Local Government, the Commissioner of the Division, on the petition of any person deeming himself aggrieved by an order under section 12, sub-section (*2*), or section 26 shall, if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit.

Power to summon

28. The Collector or Commissioner may, for the purpose of enabling him to determine how the petitioner or the company which he represents should be

assessed, summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure :[1] witnesses, etc. XIV of 1882.

Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

CHAPTER V.

Recovery of Arrears of Tax.

29. The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year. Tax when payable.

30. (*1*) In any case of default under this Act the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter : Mode and time of recovery.

Provided that where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(*2*) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (*1*) for the recovery of the tax chargeable under this Act.

(*3*) An order passed by the Collector under sub-section (*1*) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure[1] for the enforce- XIV of 1882,

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

ment of decrees for money; and the procedure under the said Code in respect of the following matters, namely,—

(*a*) sales in execution of decrees,

(*b*) arrest in execution of decrees for money,

(*c*) execution of decrees by imprisonment,

(*d*) claims to attached property, and

(*e*) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code,[1] sections 223 and 224.

(*4*) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.[2]

(*5*) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Composition.

Agreements for composition.

31. (*1*) If a company or person desires to compound for the tax assessable under Part II or Part IV, as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms and for such period as he thinks fit.

(*2*) The agreement shall provide for the payment in each year of the period comprised in the agreement of the amount of the composition; and that amount shall be recoverable in the same manner and by the same means as any other assessment made under Part II, or Part IV, as the case may be.

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

[2] For rules by the Government of Bombay as to the mode of recovering the tax on vehicles and animals plying for hire in Bombay, *see* Bom. R. and O.

Receipts.

Receipts and their contents.

32. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

(*a*) the date of the payment or recovery of the money;

(*b*) the amount paid or recovered;

(*c*) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;

(*d*) the year or part of the year for which the tax was payable;

(*e*) the place or places, district or districts, where the income accrues; and

(*f*) such other particulars, if any, as may be prescribed.

Amendment of Assessment.

Amendment of assessment.

33. If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector during or within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

Failure to make payments or deliver returns or statements.

34. (*1*) If a person fails—

(*a*) to deduct and pay any tax as required by section 8, sub-section (*1*), or section 13, sub-section (*1*), or

(*b*) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or

(*c*) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(*2*) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

False statement in declaration.

35. If a person makes a statement in a declaration mentioned in section 18, sub-section (2), which is false, and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.[1] XLV of 1860.

Prosecution to be at instance of Collector.

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

Sections 193 and 228 of Penal Code to apply to proceedings.

37. Any proceeding under section 12 or Chapter IV of this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.[1]

Power to make Rules.

Power to make rules.

[2]**38.** (*1*) The Governor General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessments under Part IV, and, generally, for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules [3] so far as regards the territories subject to that Government.

(*2*) In making a rule for preventing the disclosure of any particulars referred to in sub-section (*1*), the Governor General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code.[1] XLV of 1860.

(*3*) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(*4*) Rules made under this section shall be published in the official Gazette.

Miscellaneous.

Bar of suits in Civil Court.

39. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.

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[1] General Acts, Vol. I.

[2] As to exemption from liability to assessment, *see* notification referred to in footnote to s. 6, *supra*.

[3] For rules in force in—

(*1*) Ajmer-Merwara, *see* Aj. R. and O.;
(*2*) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 231;
(*3*) Bengal, *see* Ben. R. and O.;
(*4*) Bombay, *see* Bom. R. and O.;
(*5*) Central Provinces, *see* C. P. R. and O.;
(*6*) Madras, *see* Mad. R. and O.;
(*7*) Punjab, *see* Punj. R. and O.;
(*8*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

Exercise of powers of Collector and Commissioner.

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf.[1]

Obligation to furnish information respecting lodgers and employés.

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—

(*a*) the name of every inmate or lodger resident in any house used by him as a dwelling-house or let by him in lodgings;

(*b*) the name of every other person receiving salary or emoluments amounting to [eighty-three rupees five annas and four pies][1] per mensem, or [one thousand][1] rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not; and

(*c*) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed and who desires to be assessed at that place.

Trustees and agents to furnish information as to beneficiaries and principals.

42. An officer or person exercising all or any of the powers aforesaid may, by notice, require any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent.

Trustees, etc., to furnish informa-

43. An officer or person exercising all or any of the said powers may, by notice, require a trustee, guardian, curator, committee or agent, or a receiver

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[1] For notifications under this section for—

(*1*) Assam, *see* Assam Manual of Local Rules and Orders. Ed. 1893, p. 231;

(*2*) Ajmer-Merwara, *see* Gazette of India, 1902, Pt. II, p. 1081, and Aj. R. and O.;

(*3*) Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 2009; *ibid*, 1903, Pt. I, p. 875;

(*4*) Burma, *see* Income-tax Pamphlet, Ed. 1891, Bur. R. M., and Burma Gazette, 1902, Pt. I, p. 688; *ibid*, 1903, Pt. I, p. 919; *ibid*, 1904, Pt. I, pp. 149, 683; *ibid*, 1905, Pt. I, pp. 231, 290, 304, 314, 328, 441, 764; *ibid*, 1906, Pt. I, pp. 139, 359, 563, 630, 749, 830; *ibid*, 1907, Pt. I, pp. 423-24;

(*5*) Central Provinces, *see* C. P. R. and O.; Central Provinces Gazette, 1906, Pt. III, p. 108;

(*6*) Madras, *see* Mad. R. and O.;

(*7*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

For notifications investing Political Officers with powers in respect of persons residing out of British India, *see* Gazette of India, 1887, Pt. I, p. 465; *ibid*, 1903, Pt. I, p. 916.

[2] These words were substituted for "forty-one rupees, ten annas and eight pies," and "five hundred" respectively by the Income-tax (Amendment) Act, 1903 (XI of 1903), s. 2 (*2*), General Acts, Vol. V.

tion as to income.

or manager appointed by any Court in India, or a Court of Wards, Administrator General or Official Trustee, to furnish such returns of income liable to assessment under Part IV as may be prescribed.

Obligation to furnish other information.

44. An officer or person exercising all or any of the said powers may, at the instance of any person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

Sections 176 and 177 of Penal Code to apply to requisitions for information.

45. A person required to furnish any information under section 41, section 42, section 43 or section 44 shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

Service of notices.

46. (*1*) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866,[1] or by the delivery or tender to him of a copy of the notice. XIV of 1866.

(*2*) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(*3*) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family.

(*4*) But when the person, member or manager cannot be found, the service may be made on any adult male member of his family residing with him ; and, if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house in which the person, firm or family therein named ordinarily resides or carries on business.

Power to declare principal place of business or residence.

47. (*1*) When a company or firm has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(*2*) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which

[1] *See* now the Indian Post Office Act, 1898 (VI of 1898), General Acts, Vol. V.

of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(*3*) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(*4*) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(*5*) The powers given by this section may be delegated to, and exercised by, such officers as the Governor General in Council or the Local Government,[1] as the case may be, appoints in this behalf.

Saving in favour of payers of capitation taxes.

48. Where a person is in respect of any period liable to the tax under this Act he shall not in respect of that period be assessed * * * * [2] to the capitation-tax, or the land-rate in lieu thereof, levied in British Burma [3] under the Burma Land and Revenue Act, 1876.[4]

Indemnity.

49. Every person deducting, retaining or paying any tax in pursuance of this Act, or of any arrangement under section 9, sub-section (*2*), in respect of income belonging to another person, is hereby indemnified for the deduction, retention or payment thereof.

Powers exerciseable from time to time.

50. All powers conferred by, or conferrable under, this Act may be exercised from time to time as occasion requires.

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[1] For notification issued by the Government of Bombay under section 47, *see* Bombay Gazette, 1902. Pt. I, p. 2009; *ibid*, 1903, Pt. I, p. 875.
For notification by the Government of Burma delegating to the Financial Commissioner the powers conferred on the Local Government by sub-sections (*2*) and (*4*), *see* Bur. R. M.
For notification by the Government of the United Provinces delegating such power to the Board of Revenue, *see* U. P. R. and O.

[2] The words " to the pandhari-tax levied in the Central Provinces under Act XIV of 1867 or " were repealed by Act VI of 1902.

[3] This reference to British Burma should now be read as referring to Lower Burma— *see* the Burma Laws Act, 1898 (XIII of 1898), s. 7, Bur. Code.

[4] Bur. Code.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1878 .	The Northern India License Act, 1878 .	So much as has not been repealed.
Act No. VI of 1880 .	The Indian License Acts Amendment Act, 1880.	The whole.

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878 .	The Madras License Act, 1878 . .	So much as has not been repealed.
Act No. III of 1880 .	An Act to amend Madras Act III of 1878, as amended by Act VI of 1880.	The whole.

ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878 .	The Bombay License Act, 1878 . .	So much as has not been repealed.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1880 .	The Bengal License Act, 1880 . .	The whole.

THE SECOND SCHEDULE.

SOURCES OF INCOME AND RATES OF TAX.

(*See section 4.*)

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

PART I.

SALARIES AND PENSIONS.

1. Any salary, annuity, pension or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person. 2. Any salary, annuity, pension or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.	(*a*) If the income amounts to Rs. 2,000 per annum or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee. (*b*) If the income is less than Rs. 2,000 per annum or Rs. 166-10-8 per mensem—four pies in the rupee.

PART II.

PROFITS OF COMPANIES.

Profits of a company . .	Five pies in the rupee on the whole of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.

THE SECOND SCHEDULE—*continued.*

First Column.	Second Column.
Source of Income.	Rate of Tax.

PART III.

Interest on Securities

Interest becoming due on or after the first day of April 1886, and payable in British India, on — (*a*) promissory notes, debentures, stock or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or (*b*) [*Repealed by Act XII of 1891.*] (*c*) debentures or other securities for money issued by or on behalf of a local authority or company.	Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. [1,000][1], in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.

PART IV.

Other Sources of Income.

Any source of income not included in Part I, Part II or Part III of this schedule.	[2][(*a*) If the annual income is assessed at— not less than Rs. 1,000 but less than Rs. 1,250 the tax shall be Rs. 20 " " " 1,250 " " " 1,500 " " 28 " " " 1,500 " " " 1,750 " " 35 " " " 1,750 " " " 2,000 " " 42.] (*b*) If the annual income is assessed at Rs. 2,000 or upwards —five pies in the rupee on the income.

THE THIRD SCHEDULE.

[1] Substituted for "500" by the Indian Income-tax (Amendment) Act, 1903 (XI of 1903), s. 2 (3), General Acts, Vol. V.

[2] Sub-head (*a*) was substituted by the Indian Income-tax (Amendment) Act, 1903 (XI of 1903), s. 2 (4) *ibid.*

(*The Third Schedule.—Form of Petition*)

THE THIRD SCHEDULE.

FORM OF PETITION.

(*See section 52.*)

To THE COLLECTOR OF

The day of 188

The petition of *A. B.* of

SHEWETH as follows—

1.—Under Act No. II of 1886, your petitioner has been assessed in the sum of
rupees for the year commencing the first day of April 188

2.—Your petitioner's income and profits accruing and arising from [*here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise*] for the year ending the day of last were
rupees [as will appear from the documents of which a list is presented herewith*].

3.—Such income and profits actually accrued and arose during a period or months and days [*here state the exact number of months and days in which the income and profits accrued and arose*].

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly [*or* that he may be declared not to be chargeable under the said Act].

(Signed) *A. B.*

Form of Verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) *A. B.*

* *These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope.*

ACT No. IV OF 1886.[1]

[*29th January 1886.*]

An Act to amend section 265 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872[2]; It is hereby enacted as follows:—

New section substituted for section 265, Indian Contract Act.

1. For section 265 of the said Act the following shall be substituted, namely:—

Winding up by Court on dissolution or after termination.

"265. Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively."

2. [*Repeal of part of section 213, Act XIV, 1882. Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886.

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2. Local extent.
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[1] Short title, "The Indian Contract Act (1872) Amendment Act, 1886, *see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 135; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 47; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 186 and 335, and *ibid*, 1886, Supplement, p. 204.

The Act is in force in Upper Burma (except the Shan States) as amending Act IX of 1872, *see* the Burma Laws Act, 1898 (XIII of 1898), s. 4 and the First Schedule, Bur. Code.

The Act had been previously declared in force in the Town of Mandalay only in Upper Burma by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*), now repealed by Act XIII of 1898. S. 1 of the Act has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899) s. 3, Ben. Code.

This Act is in force in British Baluchistan as amending the Indian Contract Act, 1872 (IX of 1872), *see* the British Baluchistan Laws Regulation, 1890 (I of 1890) s. 3 (*1*) and Schedule, Bal. Code.

[2] General Acts, Vol. II.

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ACT No. VI OF 1886[1].

[*8th March 1886.*]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872[2], or the Indian Christian Marriage Act, 1872[2], and of certain marriages registered under the Parsi Marriage and Divorce Act, 1865[3], and for XV of 1872. XV of 1865.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 12; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 103; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 14 and 87, and *ibid*, 1886, p. 290.

[2] General Acts, Vol. II.

[3] General Acts, Vol. I.

the establishment of general registry offices for keeping registers of those births, deaths and marriages;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Births, Deaths and Marriages Registration Act, 1886; and

(*2*) It shall come into force on such day[1] as the Governor General in Council, by notification in the Gazette of India, directs.[2] * * *

Local extent.

2. This Act extends to the whole of British India[3] and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

"sign" includes mark, when the person making the mark is unable to write his name:

"prescribed" means prescribed by a rule made by the Governor General in Council under this Act: and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

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[1] The 1st October, 1888, *see* Gazette of India, 1888, Pt. I, p. 336.

[2] Sub-sec. (*3*) of s. 1, which was repealed by the Repealing and Amending Act, 1891 (XII of 1891), was as follows:—

"(3) Any power conferred by the Act to make rules or to issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force."

[3] It has been declared in force in the Santhal Parganas by s. 3 of the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899) Ben. Code. It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I of 1880), s. 3 and Schedule, Bal. Code.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s. 4, Bur. Code. It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Gazette of India, 1888, Pt. I, 528.

Powers exerciseable from time to time.

5. All powers conferred by this Act may be exercised from time to time as occasion requires.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES

Establishment of general registry offices and appointment of Registrars General.

6. (*1*) Each Local Government—

(*a*) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872[1], or, beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865[2], as may be sent to it under this Act, or under any of the three last-mentioned Acts, as amended by this Act ;[3] and XV of 1872. XV of 1865.

(*b*) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration[4] :

(*2*) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and

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[1] General Acts, Vol. II.
[2] General Acts, Vol. I.
[3] For General Registry Offices appointed for—
(*a*) Ajmer-Merwara, *see* Aj. R. and O.;
(*b*) Assam, *see* Assam Gazette, 1888, Notification No. 118J., dated 10th October;
(*c*) Bombay, *see* Bom. R. and O.;
(*d*) Burma, *see* Bur. R. M.;
(*e*) Coorg, *see* Coorg. R. and O.;
(*f*) Madras, *see* Mad. R. and O.;
(*g*) North-West Frontier Province, *see* Gazette of India, 1901, Pt. II, p. 1304;
(*h*) Punjab, *see* Punj. R. and O.;
(*i*) United Provinces of Agra and Oudh, *see* U. P. R. and O.
[4] For Registrars General appointed for—
(*a*) Ajmer-Merwara, *see* Aj. R. and O. ;
(*b*) Assam, *see* Assam Gazette, 1888, Notification No. 118J., dated 10th October ;
(*c*) Bombay, *see* Bom. R. and O ;
(*d*) British Baluchistan, *see* Gazette of India, 1903, Pt. II, p. 1165 ;
(*e*) Burma, *see* Burma Gazette, 1888, Pt. I, p. 459 ; Bur. R. M.
(*f*) Central Provinces, *see* C. P. R. and O.;
(*g*) Coorg, *see* Coorg R. and O.;
(*h*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 208 ;
(*i*) North-West Frontier Province, *see* Gazette of India, 1901, Pt. II, p. 1304 ;
(*j*) Punjab, *see* Punj. R. and O. ;
(*k*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

Marriages for the territories under his administration : one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

Indexes to be kept at general registry office.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, or under Act III of 1872,[1] the Indian Christian Marriage Act, 1872[1], or the Parsi Marriage and Divorce Act, 1865[2], as amended by this Act, to be made and kept in his office in the prescribed form.

XV of 1872.

XV of 1865.

Indexes to be open to inspection.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which the indexes relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized in this behalf by the Local Government,[3] and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

CHAPTER III.

Registration of Births and Deaths.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

11. (*1*) The persons whose births and deaths shall, in the first instance be registrable under this Chapter are the following, namely :—

X of 1865.

(*a*) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865[2] applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion ;

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[1] General Acts, Vol. II.
[2] General Acts, Vol. I.
[3] For officer authorized to certify copies of entries given under s. 8 in—
(*a*) Assam, *see* p. 263 of the Assam Manual of Local Rules and Orders, Ed. 1893;
(*b*) Bombay, *see* Bom. R. and O.;
(*c*) Madras, *see* Mad. R. a O.

(*b*) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect or tribe, or professing the Christian religion :

(*2*) But the Local Government, by notification in the official Gazette, may, with the previous approval of the Governor General in Council, extend the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

Power for Local Government to appoint Registrars for its territories.

[1] **12.** The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories.

Power for Governor General in Council to appoint Registrars for Native States.

13. The Governor General in Council may, by notification in the Gazette of India, appoint, either by name or by virtue of their office, so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty as he may define and, if he sees fit, for any class of persons within any part of those dominions.[3]

Registrar to be deemed a public servant.

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code.[3] XLV of 1860.

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[1] As to Registrars appointed under this section for—
(*a*) Ajmer-Merwara, *see* Aj. R. O.;
(*b*) Assam, *see* Assam List of Local Rules and Orders, Ed. 1893, p. 263;
(*c*) Bombay, *see* Bom. R. and O.;
(*d*) British Baluchistan, *see* Gazette of India, 1903, Pt. II, p. 1165;
(*e*) Burma, *see* Bur. R. M., Burma Gazette, 1906, Pt. I, p. 795; *ibid* 1903, Pt. I, p. 693;
(*f*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 246.
(*g*) Coorg, *see* Coorg R. and O.;
(*h*) Madras, *see* Mad. R. and O.;
(*i*) Punjab, *see* Punj. R. and O.;
(*j*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

[2] For Registrars of Births and Deaths appointed under this section for—
(*1*) Native States in the Bombay Presidency, *see* Brit. Enact., N. S. (W. I.);
(*2*) States of Puddu Kottai, Banganapalle, and Sandur, *see* Gazette of India, 1889, Pt. I, p. 52;
(*3*) State of Mysore, *see* Gazette of India, 1889, Pt. I, p. 54, and *ibid*, 1893, Pt. I., p. 381;
(*4*) Hyderabad State, *see* Gazette of India, 1889 and 1890, Pt. I, pp. 621 and 468, respectively;
(*5*) Rampur and Tehri States, *see* Gazette of India, 1891, p. 424;
(*6*) Kashmir and Jammu, *see* Brit Enact., N. S., (N. I.);
(*7*) Nepal, *see* Brit. Enact., N.S., (N. I.);
(*8*) Central Provinces Feudatory States, *see* Brit. Enact., N. S., (C. I.), and Gazette of India, 1895, Pt. I., p. 404;
(*9*) States in the Central India Agency, *see* Brit. Enact., N. S., (C. I.);
(*10*) States in the Rajputana Agency, *see* Brit. Enact., N. S. (Raj.), and Gazette of India, 1893, Pt. I, p. 158;
(*11*) The territory of the Raja of Nahan (Sirmur), *see* Gazette of India, 1899, Pt., I, p. 277;
(*12*) Certain States in Rajputana, *see* Gazette of India, 1899, Pt. I, p. 424;
(*13*) Baluchistan Agency Territories, *see* Gazette of India, 1903, Pt. I, p. 916.

[3] General Acts, Vol. I.

Power to remove Registrars.

15. (*1*) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

(*2*) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

Office and attendance of Registrar.

16. (*1*) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed.

(*2*) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

Absence of Registrar or vacancy in his office.

17. (*1*) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply,[1] not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*2*) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*3*) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section.

Register books to be supplied and

18. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of registe-

[1] The section has been declared by the Government of Madras to apply to all Registrars appointed by that Government, under the notification issued under s. 12, *see* Mad. R. and O.

preservation of records to be provided for.

books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

C.—Mode of Registration.

Duty of Registrar to register births and deaths of which notice is given.

19. Every Registrar of Brths and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book:

Provided that—

(*a*) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made; and

(*b*) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

Persons authorized to give notice of birth.

20. Any of the following persons may give notice of a birth, namely:—

(*a*) the father or mother of the child;

(*b*) any person present at the birth;

(*c*) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;

(*d*) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred;

(*e*) any person having charge of the child.

Persons authorized to give notice of death.

21. Any of the following persons may give notice of a death, namely:—

(*a*) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death;

(*b*) any person present at the death;

(*c*) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house;

(*d*) any person in attendance during the last illness of the deceased;

(*e*) any person who has seen the body of the deceased after death.

Entry of birth or death to be signed by person giving notice.

22. (*1*) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar.

(*2*) Until the entry has been so signed, the birth or death shall not be deemed to be registered under this Act.

(*3*) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

Grant of certificate of registration of birth or death.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee,[1] give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

24. (*1*) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals :

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(*2*) The provisions of sub-section (*1*) shall apply to every Registrar of Births and Deaths in the dominions of any Prince or State in India in alliance with Her Majesty, with this modification that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, by notification[2] in the Gazette of India, appoints in this behalf.

Searches and copies of entries in register books.

25. (*1*) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

[1] As to stamps in which such fees are to be paid, *see* Gazette of India, 1899, Pt. I, p. 82; paragraph 14 (c) of Notification No. 786 S. R.

[2] For an instance of such notification, *see* Gazette of India, 1899, Pt. I, p. 424.

(*2*) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

Exceptional provision for registration of certain births and deaths.

26. Notwithstanding anything in section 19, the Governor General in Council may make rules[1] authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

D.—Penalty for False Information.

Penalty for wilfully giving false information.

27. If any person wilfully makes, or causes to be made for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

E.—Correction of Errors.

Correction of entry in register of births or deaths.

28. (*1*) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such rules[1] as may be made by the Governor General in Council with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(*2*) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

Amendment of Marriage Acts.

Addition of new section after section 13, Act III of 1872. Transmission of certified copies of

29. After section 13 of Act III of 1872[2] (*to provide a form of marriage in certain cases*) the following section shall be inserted, namely:—

"13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate,

[1] For rules made under s. 26 conjointly with ss. 28 and 36, *see* Gazette of India, 1888, Pt. I, p. 336, and *ibid.*, 1894, Pt. I, p. 436.
[2] General Acts, Vol. II.

at such intervals as the Governor General in Council from time to time, directs, a true copy certified by him, in such form as the Governor General in Council from time to time, prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals."

entries in marriage certificate book to the Registrar General of Births, Deaths and Marriages.

XV of 1872.

30. In the Indian Christian Marriage Act, 1872,[1] the following amendments shall be made, namely:—

Amendment of the Indian Christian Marriage Act, 1872.

(*a*) at the end of section 3, the words "'Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886," shall be added;

VI of 1886.

(*b*) for the words "Secretary to the Local Government" wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;[2]

(*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

XV of 1865.

31. After section 8 of the Parsi Marriage and Divorce Act, 1865,[3] the following section shall be inserted, namely:—

Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865.

"8A. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor General in Council from time to time directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by the Local Government by which he was appointed a true copy certified by him, in such form as the Governor General from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals."

Transmission of certified copies of certificates in marriage register to Registrar General of Births, Deaths and Marriages.

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

32. If any person in British India, or in the dominions of any Prince or

Permission

[1] General Acts, Vol. II.

[2] Cl. (*c*), which amended s. 62 of the Indian Christian Marriage Act, 1872 (XV of 1872), was repealed by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 4 (2), General Acts, Vol. IV.

[3] General Acts, Vol. I.

to persons having custody of certain records to send them within one year to Registrar General.

State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section II, sub-section (*1*), or of any register or record of marriage of any persons of the classes to which Act III of 1872,[1] or the Indian Christian Marriage Act, 1872,[1] or the Parsi Marriage and Divorce Act, 1865,[2] applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, [3] [at any time before the first day of April 1891,] send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification[4] in the Gazette of India, directs in this behalf. XV of 1872. XV of 1865.

Appointment of Commissioners to examine registers.

33. (*1*) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section.

(*2*) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

Duties of Commissioners.

34. (*1*) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32;

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(*2*) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(*3*) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the

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[1] General Acts, Vol. II.
[2] General Acts, Vol. I.
[3] These words were substituted for the words "within one year from the date on which this Act comes into force" by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s. 1, General Acts, Vol. IV.
[4] For an instance of such notification *see* Gazette of India, 1899, Pt. I, p. 424.

Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of lists prepared by Commissioners and grant of certified copies of entries.

35. (*1*) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

(*2*) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government,[1] and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

Constitution of additional commissions for purposes of this Chapter.

[2]**35A.** (*1*) The Governor General in Council, if he thinks fit, may, by notification in the Gazette of India, appoint more commissions[3] than one for the purposes of this Chapter, each such commission consisting of so many and such members as he may, by a like notification, nominate thereto by name or by office, and having its functions restricted to the disposal, under this Act, and the rules thereunder, of the registers or records sent under section 32 to such Registrar General or Registrars General as the Governor General in Council may, by a like notification, specify in this behalf.

(*2*) If more commissions than one are appointed in exercise of the power conferred by sub-section (*1*), then references in this Act to the Commissioners shall be construed as references to the members constituting a commission so appointed.

CHAPTER VI.

RULES.

Power for Governor General in

36. In addition to any other power to make rules impliedly or expressly conferred by this Act, the Governor General in Council may make rules[4]—

[1] For officers appointed under s. 35 (*2*) for—
(*1*) Bengal, *see* Ben. R. and O.;
(*2*) Bombay, *see* Bom. R. and O.;
(*3*) Burma, *see* Bur. R. M.;
(*4*) Madras, *see* Mad. R. and O.;
(*5*) Punjab, *see* Punj. R. and O.;
(*6*) United Provinces, *see* U. P. R. and O.

[2] S. 35A was added by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s. 2, General Acts, Vol. IV.

[3] For Commissioners appointed in—
(*1*) the Bombay Presidency, *see* Bom. R. and O.;
(*2*) Burma, *see* Bur. R. M.;
(*3*) Madras, *see* Mad. R. and O.

[4] As to rules made under this section conjointly with ss. 26 and 28, *see* footnote to s. 26 *supra*.

Council to make rules.

(*a*) to fix the fees payable under this Act[1];

(*b*) to prescribe the forms required for the purposes of this Act;

(*c*) to prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) to prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them;

[2](*e*) to prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate;

[3](*f*) to prescribe the custody in which those registers or records are to be kept; and,

[3](*g*) generally, to carry out the purposes of this Act.

Procedure for making and publication of rules.

37. (*1*) The Governor General in Council shall, before making rules under this Act, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under this Act shall be published in the Gazette of India, and the publication in the Gazette of India of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

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[1] For fees prescribed for attendance at private residences in—
(*1*) Burma, *see* notification quoted in Bur. R. M.
(*2*) Madras, *see* Mad. R. and O.
For rules framed by the Government of India under this clause as to fees, *see* Gazette of India, 1894, Pt. I, p. 580.

[2] For rules for the guidance of Commissioners appointed under Chapter V, *see* Gazette of India, 1890, Pt. I, p. 745.

[3] For rules for the guidance of Commissioners appointed under Chapter V, framed with regard to the powers conferred by these clauses, *see* Gazette of India, 1890 and 1892, Pt. I, pp. 745 and 123, respectively.

ACT No. X OF 1886.[1]

[*12th March 1886.*]

An Act to amend the Code of Criminal Procedure, 1882, and certain other Acts.

X of 1882. WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882,[2] and certain other Acts; It is hereby enacted as follows:—

1-19. [*Amendment of certain sections of the Code of Criminal Procedure, 1882 (Act X of 1882).*] *Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898).*

20. [*Amendment of Bombay District Police Act, 1867 (Bom. Act VII of 1867).*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[3]

Indian Penal Code.[4]

XLV of 1860. **21.** (*1*) In the second clause of section 40 of the Indian Penal Code[4] between the figures "66" and "71" the figures "67" shall be inserted. Amendment of sections 40 and 64 of the Indian Penal Code.

(*2*) In the second clause of section 64 of the same Code, after the word "punishable" the words "with imprisonment or fine or" shall be inserted.

22. In section 75 of the same Code, for the words "or to double the amount of punishment" to the end of the section, the following shall be substituted, namely:— Amendment of section 75 of the Indian Penal Code.

"or to imprisonment of either description for a term which may extend to ten years."

23. After the first paragraph of section 216 of the same Code the following shall be inserted, namely:— Addition to section 216 of the Indian Penal Code.

"'Offence' in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881,[5] or otherwise, liable to be apprehended or detained in

44 & 45 Vict., c. 69.

[1] Short title, "The Indian Criminal Law Amendment Act, 1886," *see* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 249; for Report of the Select Committee, *see ibid*, 1886, Pt. IV. p. 10; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 1141 and 1180, and *ibid*, 1886, Supplement, p. 417.

Ss. 21 to 25 inclusive have been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code. Section 25 has been repealed by the Prisoners Act, 1900 (III of 1900), which extends to the Santhal Parganas—General Acts, Vol. V.

In so far as it amends the Indian Penal Code this Act is in force in Upper Burma (except the Shan States, *see* s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code. Ss. 21 to 25 of the Act had previously been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), now repealed by Act XIII of 1898.

[2] Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

[3] General Acts, Vol. IV.

[4] General Acts, Vol. I.

[5] Coll. Stat., Vol. II.

custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India."

Substitution of new sections for section 225A of the Indian Penal Code and repeal of section 651 of the Code of Civil Procedure.

24. (*1*) For section 225A of the same Code the following sections shall be substituted, namely :—

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

"225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisoment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

"225B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(*2*) [*Repeal of section 651 of the Code of Civil Procedure* (*Act XIV of 1882*]. *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

25. [*Substitution of new sections for sections 30, 31 and 32 of the Prisoners Act, 1871.*] *Rep. by the Prisoners Act, 1900* (*III of 1900*).[1]

[1] General Acts, Vol. V.

THE INDIAN TRAMWAYS ACT, 1886.

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ACT No. XI OF 1886.[1]

[*12th March 1886.*]

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (*1*) This Act may be called the Indian Tramways Act, 1886; and

(*2*) It shall come into force at once.

Local extent.

2. (*1*) It extends in the first instance to the whole of British India except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal.

(*2*) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.[2]

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(*2*) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and subsoil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road:

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 308; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 131; and for Proceedings in Council, *see ibid*, 1885, Supplement, p. 1544; and *ibid*, 1886, Supplement, pp. 7 and 418.

[2] The Act has been extended to the whole of Bombay, except the city of Bombay, and the town of Karachi and its suburbs, *see* Bombay Gazette, 1887, Pt. I, p. 899; it has also been extended to the city of Madras, *see* Fort St. George Gazette, 1886, Pt. I, p. 750.

It has been declared in force in Upper Burma (except the Shan States) by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XII of 1898), Bur. Code.

For separate Acts on the subject of tramways in—

Bengal, *see* the Bengal Tramways Act, 1883 (Ben. Act III of 1883), Ben. Code;

Calcutta, *see* the Calcutta Tramways (Electric Traction) Act, 1900 (Ben. Act IV of 1900), and the Calcutta Tramways Act, 1880 (Ben. Act I of 1880), Ben. Code;

Bombay, *see* the Bombay Tramways Act, 1874 (Bom. Act I of 1874), Bom. Code;

Karachi, *see* the Karachi Tramways Act, 1883 (Bom. Act II of 1883), Bom. Code;

Lahore, *see* the Lahore Tramways Act, 1886 (I of 1886) not republished as being practically obsolete;

Rangoon, *see* the Rangoon Tramways Act, 1883 (XXII of 1883), Bur. Code.

(*3*) "road-authority", in relation to a road, means—

(*a*) if a local authority maintains and repairs the road, then that authority;

(*b*) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(*c*) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(*4*) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

(*5*) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(*6*) "order" means an order authorizing the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(*7*) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved:

(*8*) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(*9*) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(*10*) "toll" includes any charge leviable in respect of the use of a tramway:

(*11*) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorized tolls:

(*12*) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(*13*) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction:

(*14*) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act: and

(Orders authorizing the Construction of Tramways.)

(*15*) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorizing the Construction of Tramways.

Application for and consent necessary to making of order.

4. (*1*) The Local Government may make an order [1] authorizing the construction of a tramway in a circle on application made :—

(*a*) by the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority ; or

(*b*) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority :

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

(*2*) A local authority shall not make an application for an order or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.[2]

Consent of local or road authority not necessary in certain cases.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the Local Government may, nevertheless, make an order authorizing the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

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[1] For order made by—
(*1*) the Chief Commisioner of Assam, *see* Assam Gazette, 1902, Pt. I, p. 554 ;
(*2*) the Government of Bombay, *see* Bom. R. and O. ;
(*3*) the Government of Madras, *see* Mad. R. and O. ;
(*4*) the Government of the United Provinces of Agra and Oudh, *see* U. P. Gazette, 1904, Pt. I, pp. 268 and 573.

[2] For rules made under this sub-section for the Punjab, *see* Punj. R. and O. ; and under this sub-section conjointly with s. 24 (*1*) (J.) for Burma, *see* Bur. R. M.

(Orders authorizing the Construction of Tramways.)

Procedure for making order.

6. (*1*) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway.

(*2*) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(*3*) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(*4*) Every order [1] authorizing the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any ; and that publication shall be conclusive proof that the order has been made as required by this section.

Contents of order.

7. (*1*) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(*2*) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say :—

(*a*) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle ; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle ;

For orders issued under this section in—
(*1*) the Bombay Presidency, *see* Bom. R. and O.; Bombay Gazette, 1904, Pt. I, p. 1034;
(*2*) Burma, *see* Bur. R. M.; Burma Gazette, 1905, Pt. I, p. 107; *ibid*, 1906, Pt. I, p. 107;
(*3*) the Madras Presidency, *see* Mad. R. and O.;
(*4*) Punjab, *see* Punj. R. and O.;
(*5*) United Provinces of Agra and Oudh, *see* U. P. R. and O.

(*b*) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(*c*) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(*d*) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

(*e*) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

(*f*) the gauge of the tramway, the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may from time to time require;

(*g*) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter; the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads; and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

(*h*) the application of material excavated by the promoter in the construction or maintenance of the tramway;

(*i*) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorized by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

(*j*) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

(*k*) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid;

(*l*) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause;

(*m*) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

(*n*) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety or convenience of the public;

(*o*) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(*p*) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

(*q*) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

(*r*) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

(*s*) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(*3*) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870,[1] in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

X of 1870.

(*4*) The order shall imply the condition—

(*a*) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided; and

(*b*) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorized tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

Further order.

8. (*1*) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(*2*) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(*3*) The Local Government may, in its discretion, either grant or reject the application.

(*4*) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

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[1] See now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

Power to authorize joint work by local authorities.

9. (*1*) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(*2*) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

Cessation of powers given by an order.

10. (*1*) If a promoter authorized by an order to construct a tramway—

(*a*) does not within the time specified in the order substantially commence the construction of the tramway, or

(*b*) having commenced the construction suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(*c*) does not within the time specified in the order complete the tramway and open it for public traffic,

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the Local Government.

(*2*) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

Mode of formation of tramway.

11. A tramway shall be constructed and maintained in the manner provided by the order.

Inspection of tramway before opening.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

Agreement between road-authority and promoter as to repair of roadway.

13. Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (*2*), clause (*g*), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Traffic on Tramways.

Rights of promoter and the public over tramways.

14. (*1*) The promoter of a tramway shall, subject to the provisions of sub-section (*2*) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitabe to run on the rail described in the order as the rail to be used on the tramway :

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorized to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(*2*) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway ;

Provided—

(*a*) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter ; and

(*b*) that the Local Government may by an order authorize the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

Tolls leviable by promoter or lessee.

15. (*1*) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as

may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(*2*) A list of all the tolls authorized to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

Carriage of dangerous or offensive goods.

16. (*1*) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(*2*) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(*3*) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(*4*) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(*5*) Where a servant of the promoter or lessee refuses under sub-section (*4*) to carry a parcel which has been received for the purpose of being carried upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licenses to use Tramways.

Grant to third parties of licenses to use tramway in certain events.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely :—

(*a*) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it ;

(*b*) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

(*c*) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(*d*) the licensee and his officers and servants shall permit one person, duly authorized for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey;

(*e*) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee; and

(*f*) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

Licensee to give to promoter or lessee an account of traffic.

18. A licensee shall, on demand, give to an officer or servant authorized in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

Cessation of powers of promoter and lessee on discontinuance of tramway.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end; and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

Powers of road-authority on cessation of powers of promoter.

20. (*1*) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which the working has been so discontinued, and use the materials thereof in reinstating the road.

(*2*) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road.

(*3*) The cost shall be certified by an officer of the road-authority, and the certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(*4*) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

Insolvency of Promoter.

Proceedings in case of insolvency of promoter.

21. (*1*) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(*2*) Where a notification has been published under sub-section (*1*), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the

same provisions as to the payment of the cost of the removal and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

Future purchase of undertaking by local authority.

22. (*1*) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(*a*) within such limits of time as may be specified in this behalf in the order, or

(*b*) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(*c*) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(*2*) A requisition shall not be made under sub-section (*1*) unless the making thereof has been approved by the local authority in manner prescribed.

(*3*) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(*4*) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local Authorities.

Lease of, or working of, tramway by local authority.

23. (*1*) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorized tolls.

(*2*) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(*3*) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(*4*) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(*5*) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages.

Rules.

Power to make rules.

[1] **24.** (*1*) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(*a*) as to the form in which an application for an order shall be made ;

(*b*) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid ;

(*c*) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (*4*), or a further order is made under section 8 ; the investment of money so paid ; the disposal of interest or dividends from time to time accruing due on money or securities

[1] For rules made for Burma under clauses (*b*), (*c*), (*d*), (*f*), (*g*) and (*h*) of sub section (*1*) of this section, *see* Bur. R. M.; Burma Gazette, 1908, Pt. I, p. 126.

so paid, lodged or invested ; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter ; and the forfeiture, repayment or return of the money or securities ;

(*d*) as to the plans and section of any works to be deposited by applicants for orders or by promoters ;

(*e*) for regulating the use of steam-power or any other mechanical power on a tramway ;

(*f*) as to any matter specified in section 7, sub-section (*2*), clauses (*c*) (*d*), (*e*), (*j*) and (*k*), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for ;

(*g*) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the Local Government or as that Government directs, and as to the forms in which those accounts are to be submitted ;

(*h*) as to the accidents of which report is to be made to the Local Government or as that Government directs ;

(*i*) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee ; and,

(*j*) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for carrying out the purposes of this Act. [1]

(*2*) A local authority may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules[1] made by the Local Government under this Act, for regulating—

(*a*) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority ;

(*b*) the use of animal power on the tramway ;

(*c*) the distances at which carriages using the tramway are to be allowed to follow one after the other ;

(*d*) the stopping of carriages using the tramway, and the notice to be given to the public of their approach ;

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[1] As to rules made for Burma under this clause conjointly with s. 4 (*2*), *see* footnote to that section.

For rules made for Burma under this clause conjointly with s. 26 (*2*), *see* footnote to that section, *infra*.

[2] For instance of rules made under this power, *see* U. P. R. and O.; Mad. R. and O.

(*e*) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted ;

(*f*) the traffic on roads along or across which the tramway is laid ;

(*g*) the number of passengers which may be carried in any carriage ;

(*h*) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee ; and,

(*i*) generally, the mode of use of the tramway.

(*3*) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules [1] consistent with this Act and with the order and any rules made under this Act—

(*a*) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him ; and

(*b*) for regulating the travelling in any carriage belonging to him.

(*4*) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under this section.

Power to impose penalty by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend,—

(*a*) if the authority making the rule is the Local Government, to two hundred rupees, and,

(*b*) if that authority is a local authority or a promoter or lessee, to twenty rupees ;

and, when the breach is a continuing breach, with a further fine which may extend,—

(*c*) if the authority making the rule is the Local Government, to fifty rupees, and,

(*d*) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making, and publication of, rules.

26. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed. [2]

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[1] For an instance, *see* Mad. R. and O.

[2] For rules as to mode of publication in Burma, *see* Bur. R. M.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

Offences.

27. If a promoter—

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

(*a*) constructs or maintains a tramway otherwise than in accordance with the order, or

(*b*) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or

(*c*) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order,

he shall (without prejudice to the enforcement or specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on complaint made by the Local Government or by the local authority or road-authority or by the District Magistrate or, with the previous sanction of the District Magistrate, by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the author ty of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

Penalty for obstructing promoter in exercise of his powers.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely :—

Penalty for interfering with tramway.

(*a*) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith, or

(*b*) places, throws upon or across any such tramway any wood, stone, refuse or other thing, or

(*c*) does anything in such a manner as to obstruct any carriage using any such tramway, or

(*d*) abets within the meaning of the Indian Penal Code [1] the doing of, or attempts to do, anything mentioned in clause (*a*), clause (*b*) or clause (*c*), XLV of 1860.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of proper toll.

31. (*1*) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(*2*) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid.

(*3*) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

Penalty for licensee not

33. (*1*) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account

when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees. giving to promoter or lessee an account of traffic or giving false account.

(*2*) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Saving of prosecutions under other laws.

Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

35. (*1*) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure,[1] be settled, on the application of either party, by a referee. Differences between promoters or lessees and authorities.

XIV of 1882.

(*2*) Where the difference is—

(*a*) between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, or

(*b*) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more

[1] See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. II, section 17, General Acts, Vol. VI.

than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(*3*) In other cases the referee shall be appointed by the Local Government.

(*4*) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed.

(*5*) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court.

(*6*) In the case of every other difference the award of the referee shall be final.

Recovery of Toll.

Recovery of moneys due from promoters and, in certain cases, from lessees.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorize the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

Recovery of tolls from licensees.

37. (*1*) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee, if possible, and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(*2*) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or

other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(*3*) When application is made to a Magistrate under sub-section (*1*), he may make an interim order of distraint pending his final decision.

Recovery of tolls from passengers.

38. Any tolls due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

Promoter to have right of user only.

39. (*1*) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(*2*) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

Saving of power over roads traversed by tramways.

40. (*1*) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(*2*) The road-authority, local authority or other person executing any work referred to in sub-section (*1*) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

Saving of power of local authority and police to regulate traffic on roads.

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

Want of funds not a sufficient reason for default.

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

Application by local authorities of local funds to tramways.

45. (*1*) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by, a local authority under this Act.

(*2*) The fund shall also be applicable, with the previous sanction of the Local Government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (*1*).

Extension of Act to existing tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorized by the Local Government to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

Prohibition of construction of tramways except under this Act.

47. (*1*) A tramway of which the construction has not been authorized by the Local Government before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act.

(*2*) A person constructing a tramway in contravention of sub-section (*1*) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorized by the Local Government to be constructed, before the passing of this Act,

shall be liable, on the complaint of the Local Government or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

Transfer of control on exclusion of local area from circle of local authority.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act, or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the Local Government or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

49. [*Explanation and amendment of section 54 of Railway Act.*] *Rep. by the Indian Railways Act, 1890 (IX of 1890).*[1]

Powers of Local Government exerciseable from time to time.

50. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

THE INDIAN SECURITIES ACT, 1886.

CONTENTS.

SECTIONS.

1. Short title and commencement.
2. Repeal.
3. Definitions.
4. Notice of trust not receivable.
5. Right of survivors of joint payees of Government securities.
6. Prohibition of indorsements on allonges to Government securities.
7. Holding of Government securities by holders for the time being of public offices.
8. Transfer and discharge of certificates and coupons.
9. Indorser of Government security not liable for amount thereof.

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[1]General Acts, Vol. V.

10. Impression of signature on Government securities.
11. Issue of renewed securities.
12. Issue of duplicate securities.
13. Period after which the Government is released from liability in respect of original security.
14. Power of Governor General in Council to make rules.
15. Publication of drafts and rules.

ACT No. XIII OF 1886.[1]

[*19th March 1886.*]

An Act to consolidate and amend the law relating to Government Securities.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Securities Act, 1886; and

(*2*) It shall come into force on the first day of April, 1886.

* * * * * *[2]

Repeal.

2. (*1*) On and from the day on which this Act comes into force, the Indian Securities Act, 1881, and the Indian Securities Act, 1885, shall be repealed. III of 1881. XIX of 1885.

(*2*) But any authority conferred, notification issued, list published or rule or order made under either of those Acts shall, so far as may be, be deemed to have been conferred, issued, published or made under this Act.

Definitions.

3. In this Act—

(*1*) "Government security" includes promissory notes, debentures, stock-certificates and all other securities issued by the Government of India or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a stock-note or a currency-note: and

(*2*) "prescribed" means prescribed by rules made by the Governor General in Council.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 49; for Report of the Select Committee, *see ibid*, Pt. IV, p. 191; and for Proceedings in Council, *see ibid*, Supplement, pp. 225, 233 and 669.

The Act was declared in force in Upper Burma except the Shan States by the Upper Burma Laws Act, 1886 (XX of 1886), and is now in force there under s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, by which Act XX of 1886 is repealed.

[2] Sub-sec. (*3*), which was as follows:—"(*3*) The power conferred on the Governor General in Council by section 7, sub-section (*1*), may be exercised at any time after the passing of this Act; but a notification issued in exercise of that power shall not take effect until the Act comes into force," was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Notice of trust not receivable.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Right of survivors of joint payees of Government securities.

IX of 1872.

5. (*1*) Notwithstanding anything in the Indian Contract Act, 1872,[1] section 45, when a Government security is payable to two or more persons jointly and either or any of them dies, the security shall be payable to the survivor or survivors of those persons.

(*2*) Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to him or them and the deceased.

(*3*) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

Prohibition of indorsements on allonges to Government securities.

XXVI of 1881.

6. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881,[2] the holder of a Government security shall not be said to indorse the security, or be called the indorser thereof, if when he signs the same for the purpose of negotiation, he inscribes his signature for that purpose elsewhere than on the back of the security itself.

Holding of Government securities by holders for the time being of public offices.

7. (*1*) In the case of any public office[3] to which the Governor General in Council may, from time to time, by notification in the Gazette of India, declare this sub-section to apply, a Government security may be made or indorsed payable to or to the order of the holder for the time being of the office by the name of the office.

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[1] General Acts, Vol. II.

[2] *Supra.*

[3] The section has been declared applicable to the offices of—

(*1*) Managers of State Railways,		*see* Gazette of India, 1886, Pt. I, p. 345.
(2) Commanding Officers of Regiments,	Ditto	ditto, p. 382.
(3) Chairman, Town Council, Bombay, and Municipal Commissioner, Bombay,	Ditto	ditto, p. 422.
(*4*) Chairman, Harbour Trust Board, Madras,	Ditto	1887, Pt. I, p. 186.
(*5*) Registrar of any Presidency Small Cause Court,	Ditto	1889, Pt. I, p. 346.
(*6*) Assistant Commissioners of Salt and Abkari Revenue, Madras,	Ditto	1890, Pt. I, p. 613.
(*7*) Consulting Architect to Government, Madras,	Ditto	1891, Pt. I, p. 465.
(*8*) Administrative Medical Officer, North-West Frontier Province,	Ditto	1902, Pt. I, p. 289.
(*9*) Offices under the Government of India, offices of Secretaries to Local Governments, and other offices,	Ditto	1886, Pt. I, p. 270. 1889, Pt I, p. 40. For the general list of such officers, *see ibid*, 1903, Pt. I, p. 852.
(*10*) Secretary, Railway Board,	Ditto	1908, Pt. I, p. 477.
(*11*) Deputy Controller, Military Accounts,	Ditto	1908, Pt. I, p. 648.

And *see* also the list of Local Rules and Orders published by the several Local Governments.

(*2*) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder for the time being of the office to the succeeding holder for the time being of the office on and from the date on which the latter takes charge of the office.

(*3*) When the holder for the time being of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office.

(*4*) A writing on a Government security now or heretofore standing in the name of the holder of a public office whereby the security has been or was made or indorsed payable to or to the order of the holder of the office for the time being, shall not be deemed to be or to have been invalid by reason only of the payee or indorsee being the holder for the time being of a public office by the name of the office.

(*5*) This section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

Transfer and discharge of certificates and coupons.

8. (*1*) Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of the loan, the title to the certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer.

(*2*) On payment, by or on behalf of the Government, to the bearer of the certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if the certificate or coupon were a promissory note payable to bearer.

Indorser of Government security not liable for amount thereof.

9. A person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest thereunder.

Impression of signature on Government securities.

10. (*1*) The signature of the officer of the Government of India authorized to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on the securities.

(*2*) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the officer.

Issue of renewed securities.

11. A person claiming to be entitled to a Government security as payable to him under an indorsement may, on satisfying the prescribed officer of the justice of his claim and paying the prescribed fee and delivering the security

duly receipted to the prescribed officer, obtain from the officer a renewed security issued payable to himself.

Issue of duplicate securities.

12. (*1*) When a Government security is alleged to have been wholly or partly lost or destroyed, and a person claims to be the person to whom but for the loss or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction and of the justice of the claim, obtain from him an order for—

(*a*) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(*b*) the issue of a duplicate security payable to the applicant.

(*2*) An order shall not be passed under sub-section (*1*) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(*3*) A list of the securities in respect of which an order is passed under sub-section (*1*) shall be published in the Gazette of India at such times as the Governor General in Council may, from time to time, direct.

Period after which the Government is released from liability in respect of original security.

13. When a renewed security has been issued under section 11, or a duplicate security has been issued under section 12, the Government shall be discharged from all liability in respect of the original security of which the renewed or duplicate security has been issued—

(*a*) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security;

(*b*) in the case of a duplicate security, after the lapse of six years from the date of the publication under section 12, sub-section (*3*), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is the later.

Power of Governor General in Council to make rules.

14. The Governor General in Council may, from time to time, make rules[1] to prescribe—

(*a*) the mode in which payment of interest in respect of Government securities is to be recorded and acknowledged;

(*b*) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed;

(*c*) the fees to be paid in respect of applications under sections 11 and 12;

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[1] For such rules, *see* Gazette of India, 1888, Pt. I, p. 6; *ibid*, 1896, Pt. I, p. 628; and *ibid*, 1902, Pt. I, p. 669.

(*d*) the form in which securities delivered for renewal are to be receipted;

(*e*) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 11 and 12;

(*f*) the proof which is to be produced by persons applying for duplicate securities;

(*g*) the form and mode of publication of the notification mentioned in section 12, and the period after which interest may be paid or a duplicate security may be issued under that section;

(*h*) the nature and amount of the indemnity to be given by a person applying under section 12 for the payment of interest or the issue of a duplicate security; and,

(*i*) generally, all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules.

15. (*1*) The Governor General in Council shall, before making rules under section 14, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under section 14 shall be published in the Gazette of India, and the publication in that Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

ACT No. XVIII OF 1886.[1]

[*24th September 1886.*]

An Act to amend Act XXXVI of 1858.

WHEREAS it is expedient to amend Act XXXVI of 1858 (*an Act relating to Lunatic Aylums*) ; It is hereby enacted as follows :—

1. After section 6 the following shall be inserted, namely :—

New section inserted after section 6. Detention of supposed lunatics under observation.

"**6A.** (*1*) Where a person found wandering at large who is deemed to be a lunatic, or where a person believed to be dangerous by reason of lunacy, is apprehended and sent to the Magistrate or the Commissioner of Police, or where, on report or information that a person deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected, the Magistrate or the Commissioner of Police sends for him and then determines to proceed as prescribed in section 4 of this Act, the Magistrate or the Commissioner of Police, on the request of the medical officer, may, by order in writing, authorize the detention of the supposed lunatic for such time, not exceeding ten days, as, in the opinion of the Magistrate or the Commissioner of Police, may be necessary to enable the medical officer to form an opinion on the question whether or not the supposed lunatic is a person with respect to whom a certificate in the form A in the schedule to this Act ought to be signed.

(*2*) If the medical officer certifies further detention than has been authorized under sub-section (*1*) to be necessary to enable him to form his opinion on that question, the Magistrate or the Commissioner of Police may from time to time, by order in writing, authorize such further detention as he deems to be necessary :

Provided that a supposed lunatic shall not be detained for the purpose of this section for a longer time than fourteen days from the date on which the first order authorizing his detention for that purpose is made.

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[1] Short title, "The Indian Lunatic Asylums Act (1858) Amendment Act, 1886," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1885 Pt. V, p. 357; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 280; for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 7 and 1335.

The Act is in force in Upper Burma (except the Shan States) as amending Act XXXVI of 1858, *see* the Burma Laws Act, 1898 (XIII of 1898), s. 4 and the First Schedule, Bur. Code.

The Act had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371.

The whole Act except section 3 is in force in the Santhal Parganas under s. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

As amending Act XXXVI of 1858, it is in force in the Angul District under the Angul District Regulation 1894 (I of 1894), s. 3, Ben. Code ; in British Baluchistan under the British Baluchistan Laws Regulation, 1890 (I of 1890), Bal. Code ; and as such it has been extended by notification under s. 5, to the Scheduled District of Coorg, *see* Gazette of India, 1887, Pt. I, p. 144.

(*3*) The Executive Government may, from time to time, make rules as to the place of detention, and the care and treatment, of supposed lunatics detained under this section."

Amendment of section 9.

2. To section 9 the words "Subject to the provisions of any enactment for the time being in force" shall be prefixed.

New sections to follow section 17. Use of provincial asylums as presidency asylums for purposes of the Act.

3. After section 17 the following shall be inserted, namely, * * *[1] :—

"17B. The Governor General in Council may, from time to time, by order, direct, with respect to any part of British India which is not annexed to a presidency or, being annexed to the presidency of Fort William, Fort St. George or Bombay, is situated at a greater distance than three hundred miles from Calcutta, Madras or Bombay, respectively, that any lunatic asylum in British India named in the order shall be deemed for that part to be a lunatic asylum at the presidency for the purposes of this Act."

[1] That part of s. 3 which related to the addition of s. 17A was repealed by the Repealing and Amending Act, 1891 (XII of 1891), a new section having been enacted by s. 1 of the Indian Lunatic Asylums Act (1858) Amendment Act, 1889 (XX of 1889), General Acts, Vol. IV.

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